

No. 14680

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

TEXAS INDEPENDENT OIL COMPANY,
INC., Respondent.

Transcript of Record

Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

JUL 11 1957

PAUL R. O'BRIEN, CLERK



No. 14680

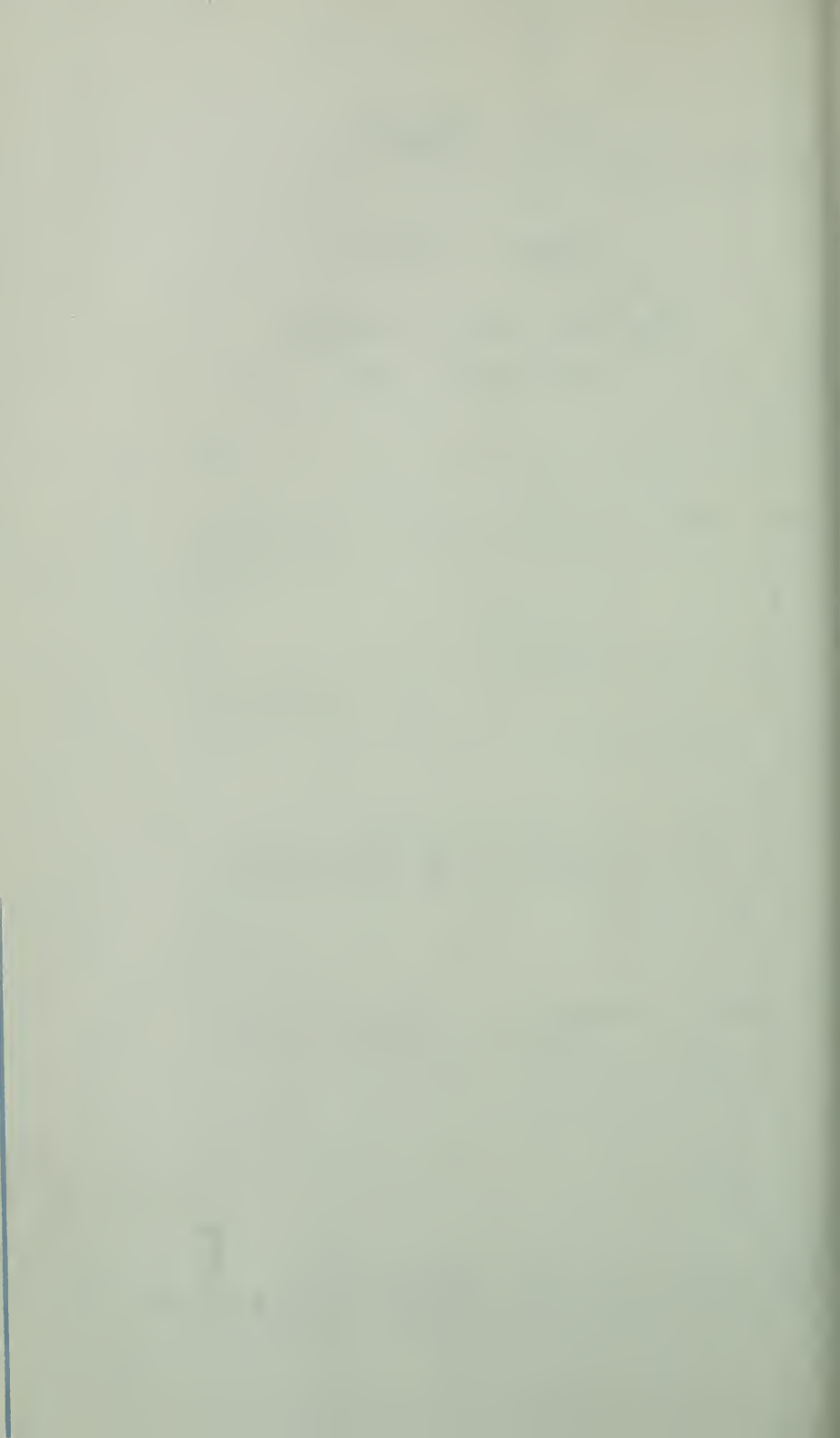
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Case No. 33-CA-230. Date filed: May 19, 1953.
Compliance Status checked by: J.K.N.

* * * * *

1. Employer against whom charge is brought:
Texas Independent Oil Company, 1841 West Lin-
den, Phoenix, Arizona.

No. of workers employed: 11.

Nature of employer's business: Transportation of
petroleum products.

The above-named employer has engaged in and
is engaging in Unfair Labor Practices within the
meaning of Section 8(a) Subsections (1) and (3)
and (5) of the National Labor Relations Act, and
these Unfair Labor Practices are Unfair Labor
Practices affecting commerce within the meaning
of the Act.

2. Basis of the charge:

On or about May 11, 12 and 15, 1953, the Texas
Independent Oil Company, through its officers,
agents and employees, interfered with, restrained
and coerced its employees in the exercise of the
rights guaranteed in Section 7 of the Act by in-
terrogating them regarding their membership in
Teamsters Local 310, a labor organization.

Said employer, through its officers, agents and
employees, on or about May 15, 1953, terminated the

employment of John E. Cox and William J. Johnson because of their membership and activities in behalf of said labor organization to discourage membership therein.

By the acts set forth in the paragraphs above and by other acts and conduct, it by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of labor organization, including local name and number, or person filing charge: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310.

4. Address: 267 South Stone Avenue, Tucson, Arizona. Telephone No. 4-1131.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Amer.

6. Address of national or international, if any: 100 Indiana Ave., N. W., Washington 1, D. C.

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By HOWARD D. GRANT,
President

Date: May 16, 1953.

GENERAL COUNSEL'S EXHIBIT No. 1-C

United States of America
National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Case No. 33-CA-230. Date filed: May 28, 1953.
Compliance status checked by: J.K.N.

* * * * *

1. Employer against whom charge is brought:
Texas Independent Oil Company, 1841 West Linden,
Phoenix, Arizona.

Number of workers employed: 11.

Nature of employer's business: Transportation of
petroleum products.

The above-named employer has engaged in and is
engaging in unfair labor practices within the meaning
of Section 8(a), Subsections (1) and (3) of the
National Labor Relations Act, and these unfair
labor practices are unfair labor practices affecting
commerce within the meaning of the act.

2. Basis of the charge:

On or about May 11, 12 and 15, 1953, the Texas
Independent Oil Company, through its officers,
agents and employees, interfered with, restrained
and coerced its employees in the exercise of the
rights guaranteed in Section 7 of the Act by in-
terrogating them regarding their membership in
Teamsters Local 310, a labor organization.

Said employer, through its officers, agents and
employees, on or about May 15, 1953, terminated
the employment of John E. Cox and William J.

Johnson and on May 25, 1953, terminated the employment of E. W. Richins, Jr., because of their membership and activities in behalf of said labor organization to discourage membership therein.

By the acts set forth in the paragraphs above and by other acts and conduct, it by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of labor organization, including local name and number, or person filing charge: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310.

4. Address: 267 South Stone Avenue, Tucson, Arizona. Telephone No. 4-1131.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

6. Address of national or international, if any: 100 Indiana Ave., N. W., Washington 1, D. C.

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By FRED A. BONE,
Secretary Treasurer

Dated: May 28, 1953.

GENERAL COUNSEL'S EXHIBIT No. 1-E

United States of America
National Labor Relations Board

SECOND AMENDED CHARGE AGAINST
EMPLOYER

Case No. 33-CA-230. Date filed: August 3, 1953.
Compliance Status checked by: LH.

* * * * *

1. Employer against whom charge is brought:
Texas Independent Oil Company, 1841 West Linden,
Phoenix, Arizona.

Number of workers employed: 21.

Nature of employer's business: Transportation of
petroleum products.

The above-named employer has engaged in and is
engaging in unfair labor practices within the meaning
of Section 8(a), Subsections (1) and (3) of the
National Labor Relations Act, and these unfair
labor practices are unfair labor practices affecting
commerce within the meaning of the Act.

2. Basis of the charge:

The above-named employer by its officers, agents
and representatives terminated the employment of
the following named employees, on the dates stated
because of their membership in and activities in
behalf of Int'l. Bhd. of Teamsters, Chauffeurs,
Warehousemen, and Helpers of America, Local
Union No. 310, a labor organization, and to discourage
membership in said labor organization,
and at all times since their discharge the above-

named employer has refused to reinstate the named employees:

William J. Johnson, May 15, 1953.

John Cox, May 15, 1953.

E. W. Richins, Jr., May 25, 1953.

Harry Almada, June 3, 1953.

On or about May 11, 12 and 15, 1953 it by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating them regarding their membership in International Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, a labor organization.

By the acts set forth in the paragraphs above and by other acts and conduct, it by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of labor organization, including local name and number, or person filing charge: Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 310, AFL.

4. Address: 267 S. Stone Avenue, Tucson, Arizona. Telephone No. 4-1131.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers.

6. Address of national or international, if any: 100 Indiana Avenue, N. W., Washington 1, D. C.

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By HOWARD D. GRANT,
President

Date: 8/1/53.

GENERAL COUNSEL'S EXHIBIT No. 1-G

United States of America
National Labor Relations Board

THIRD AMENDED CHARGE AGAINST
EMPLOYER

Case No. 33-CA-230. Date filed: August 11, 1953.
Compliance Status checked by: LH.

* * * * *

1. Employer against whom charge is brought:
Texas Independent Oil Company, Inc., 1841 West
Linden, Phoenix, Arizona.

Number of workers employed: 21.

Nature of employer's business: Transportation of
petroleum products.

The above-named employer has engaged in and is
engaging in unfair labor practices within the mean-
ing of Section 8(a), Subsections (1) and (3) of the
National Labor Relations Act, and these unfair
labor practices are unfair labor practices affecting
commerce within the meaning of the Act.

2. Basis of the charge:

The above-named employer by its officers, agents
and representatives terminated the employment of

the following named employees, on the dates stated because of their membership in and activities in behalf of Int'l. Bhd. of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local Union No. 310, a labor organization, and to discourage membership in said labor organization, and at all times since their discharge the above-named employer has refused to reinstate the named employees:

William J. Johnson, May 15, 1953.

John Cox, May 15, 1953.

E. W. Richins, Jr., May 25, 1953.

Harry Almada, June 3, 1953.

On or about May 11, 12 and 15, 1953 it by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by interrogating them regarding their membership in Int'l. Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, a labor organization.

By the acts set forth in the paragraphs above and by other acts and conduct, it by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of labor organization, including local name and number, or person filing charge: Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL.

4. Address: 267 S. Stone Avenue, Tucson, Arizona. Telephone No. 4-1131.

5. Full name of national or international labor organization of which it is an affiliate or constituent unit: Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.

6. Address of national or international, if any: 100 Indiana Avenue, N. W., Washington 1, D. C.

7. Declaration: I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

/s/ By HOWARD D. GRANT,
President

Date: August 8, 1953.

GENERAL COUNSEL'S EXHIBIT No. 1-J

United States of America

Before the National Labor Relations Board
Sixteenth Region

Case No. 33-CA-230

In the Matter of TEXAS INDEPENDENT OIL
COMPANY, INC., and INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUF-
FEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL UNION No. 310, AFL

COMPLAINT

It having been charged by International Brother-
hood of Teamsters, Chauffeurs, Warehousemen and
Helpers of America Local Union No. 310, AFL,
under dates of May 19, 28, August 3, and 11, all in

1953 that Texas Independent Oil Company, Inc., hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act, the General Counsel for the National Labor Relations Board, hereinafter referred to as the Board, by the Regional Director for the Sixteenth Region of the Board, hereby alleges as follows:

1. Respondent is and has been at all times material hereto, a corporation duly organized under and existing by virtue of the laws of the State of Arizona, having its principal office and place of business at 1841 W. Linden in the City of Phoenix, Arizona, and is now and has been at all times herein mentioned continuously engaged at said place of business, in the transportation of gasoline and petroleum products.

2. Respondent in the course and conduct of its business, during the twelve-month period ending June 30, 1953, which period is representative of all times material hereto, purchased equipment consisting principally of trucks, tractors, trailers and related products, valued in excess of \$75,000.00 of which more than 85 per cent was shipped in interstate commerce to said place of business, from points outside the State of Arizona. During the same period, respondent sold and transported products consisting principally of gasoline and petroleum products valued in excess of \$1,000,000.00 of which more than 95 per cent was shipped in inter-

state commerce from points outside the State of Arizona to points located in the State of Arizona.

3. Copies of the charges hereinabove referred to were served on respondent by registered mail on May 19, 28, August 3, and 11, all in 1953.

4. International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, hereinafter referred to as the union, is a labor organization within the meaning of section 2, subsection (5) of the Act.

5. Respondent did on or about the respective dates listed alongside each name, discharge those employees whose names are set forth as follows:

John Cox, May 15, 1953

William J. Johnson, May 15, 1953

E. W. Richins, Jr., May 25, 1953

Harry Almada, June 3, 1953

6. Respondent has, since the date of discharge listed above in paragraph 5, failed to, refused to and continues to refuse to reinstate the employees named above to their former or substantially equivalent positions or employment.

7. Respondent did discharge and refuse or fail to reinstate employees named above in paragraph 5 for the reason that they joined or assisted the union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

8. Respondent, through its officers, agents and employees, from on or about April 11, 1953 to date, has interrogated its employees concerning their union affiliations; has threatened and warned its em-

ployees to refrain from assisting, becoming members of or remaining members of, the union; has kept under surveillance the meeting places, meetings and activities of the union or the concerted activities of its employees for the purpose of self-organization or improvement of working conditions; and more particularly, the respondent has done the following:

(a) On or about April 11, 1953, M. A. Quisenberry, as agent of Respondent, stated substantially as follows: "Are you union?"; to which the employee replied, "Yes", following which Quisenberry stated substantially: "The reason I asked is because I want non-union men, the old man would never stand for it, it would get me in trouble and then I would have to fire you, you must drop your union book, a withdrawal card will not mean anything—it won't matter either way". Upon obtaining a promise of the Respondent's employee to obtain his withdrawal card, Quisenberry stated substantially: "If you promise not to instigate any union activities, you can have a job as long as you want it because I don't want anything to do with the union, the union creates too much trouble for the company."

(b) On or about May 30, 1953, Quisenberry, as agent of Respondent, stated substantially to one of Respondent's employees as follows: "Richins is a good fellow, but I can't use him because I don't want anything to do with the union, the union creates too much trouble for the company."

(c) On or about May 30, 1953, Quisenberry, as

agent of Respondent, stated substantially to one of Respondent's employees as follows: "Richins is a good fellow but I can't use him because I'm afraid he will go all union."

(d) On or about May 24, 1953, Quisenberry, as agent of Respondent, stated substantially to one of Respondent's employees as follows: "When I hired Cox, I asked him if he was a union man and had a union book, and Cox said, 'No', so I hired Cox on the strength of that. Later on I found out Cox had belonged to the union all the time. It made me mad that I loaned him \$20.00 when he told me he did not have a book, and I have no use for a guy like that so I let him go."

(e) On or about May 15, 1953, Quisenberry, as agent of Respondent, directed one of Respondent's employees substantially as follows: "You are to have no part in the union, the old man has me on the carpet for hiring a union man, the old man will park all of those trucks, drop back from 6c to $5\frac{1}{2}$ c per mile and move all fuel by rail before he will go with the union. As I find out who the union men are, I'll let them go on the spot."

(f) On or about May 22, 1953, Quisenberry, as agent of Respondent, inquired substantially of three of Respondent's employees as follows: "How are you going to vote at the union election?"

(g) On or about March 2, 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "Are you keeping your union book up?"

(h) On or about May 15, 1953, M. A. Quisen-

berry, as agent of Respondent, stated substantially to one of Respondent's employees as follows: "I had a letter from the local union in El Paso and Tucson, and I threw it in the waste basket. I am definitely not going union."

(i) On or about April 14, 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "Are you in the union? We don't want anything to do with the union", and upon being informed by Respondent's employee that said employee's membership had gone delinquent in 1948 stated substantially that "it would be all right so long as Respondent employee was not in the union." Quisenberry further inquired substantially: "Is Cox in the Union?"

(j) On numerous occasions between the dates of April 15 and June 30, all in 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "Are you a member of the Union?"

(k) On or about April 25, 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "Are you in the union?"

(l) On or about May 15, 1953, M. A. Quisenberry, as agent of Respondent, stated substantially to one of Respondent's employees as follows: "I definitely do not want any union drivers, and I am going to get rid of all of them who are union members. Rather than come down and talk to the union about a contract, I will move all of my trucks to

El Paso and that is what I intend to do, I am going to get rid of anybody who is paid up in the union and hire all non-union drivers, and if necessary to get drivers who are non-union I will teach men how to drive rather than use union drivers. You will have to drop your union book to work for me."

(m) On or about April 1, 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "Do you belong to the union?"; upon being informed by Respondent's employee that the employee had his withdrawal card, Quisenberry further stated substantially, "I think that will be all right. I am looking for non-union drivers and making sure that I get a non-union crew. In the event the drivers go union, the old man would shut the operation down."

(n) On or about May 22, 1953, M. A. Quisenberry, as agent of Respondent, inquired of one of Respondent's employees substantially as follows: "How are you going to vote in the event there is a union election? If you fellows vote union, you will vote yourself out of a job."

(o) On or about April 13, 1953, M. A. Quisenberry, as agent of Respondent, inquired of an applicant for employment with Respondent substantially as follows: "Are you a member of the union. Is Johnson a member of the union?"; and stated further substantially: "I don't want any union men, and this isn't going to be a union job. If you be-

come an employee of this company, you will have to quit paying dues and drop your card."

(p) On or about May 25, 1953, M. A. Quisenberry, as agent of Respondent, inquired of an applicant for employment with Respondent company substantially as follows: "Do you belong to a labor organization? If you do, put the information on our application blank."

9. By the acts described above in paragraphs 5 and 6, for the reasons set forth above in paragraph 7, respondent did discriminate, and is discriminating in regard to the hire or tenure or terms or conditions of employment of the employees named above in paragraph 5, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of section 8 (a), subsection (3), of the Act.

10. By the acts described above in paragraphs 5, 6, and 8, and by each of said acts, respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of section 8 (a), subsection (1), of the Act.

11. The activities of respondent, described above in paragraphs 5, 6, and 8, occurring in connection with the operations of respondent, described above in paragraphs 1 and 2 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor

disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of respondent, described above, constitute unfair labor practices affecting commerce within the meaning of section 8 (a), subsections (1), (3) and section 2, subsections (6) and (7), of the Act.

Wherefore, the General Counsel of the National Labor Relations Board has caused this complaint to be signed and issued by the Regional Director for the Sixteenth Region, on the 17th day of September, 1953 against Texas Independent Oil Company, Inc., respondent herein.

[Seal] /s/ EDWIN A. ELLIOTT,
Regional Director, National Labor Relations Board,
Sixteenth Region.

GENERAL COUNSEL'S EXHIBIT No. 1-L

[Title of Board and Cause.]

ANSWER

Comes Now Texas Independent Oil Company, Inc., and in answer to the complaint filed herein, and pursuant to the rules and regulations of the National Labor Relations Board, hereby admit, deny and allege as follows in answer to the complaint:

1. Answering paragraph 1, respondent admits the allegations therein contained.

2. Answering paragraph 2, respondent admits the allegations therein contained, except that portion which alleges that said twelve-month period ending

June 30, 1953, is representative of all times material hereto and, in this connection, alleges that prior to March, 1953, this respondent had secured all of its gasoline from the State of California but, due to a shortage of gasoline on the Pacific Coast and for other reasons, the operation was changed to El Paso, Texas, and gasoline was delivered from the Standard Oil Refinery at El Paso and transported to Phoenix; the operation in its inception being temporary for the reason that price changes and a surplus of gasoline on the Pacific Coast would mean that gasoline would again be transported from Los Angeles to Arizona points rather than from El Paso to Arizona points.

3. Answering paragraphs 3 and 4, this respondent admits the allegations therein contained.

4. Respondent admits the allegations contained in paragraph 5.

5. Answering paragraphs 6 and 7, this respondent denies all and singular the allegations therein contained and in particular that it failed and refused to reinstate the employees for the reason they joined or assisted in the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

6. Answering paragraph 8, this respondent denies all and singular the allegations therein contained and, with particularity, the first paragraph and subparagraphs a, b, c, d, e, f, g, h, i, j, k, l, m, n, o, p.

7. Answering paragraphs 9, 10, 11 and 12, this

respondent denies all and singular the allegations therein contained.

8. Further answering, this respondent alleges that John E. Cox was dismissed because of a direct violation of a clear company instruction regarding speeding on the highways. At the time of employment, Mr. Cox, as well as all other company drivers, was informed that the company speed limit was fifty-five miles per hour. The company has installed tachograph charts on all equipment, which charts clearly show the speed at which the equipment is being driven and Mr. Cox's dismissal came the morning after his equipment arrived at Tucson containing a chart showing extended driving period of sixty miles per hour.

9. Further answering, this respondent states the cause of dismissal of William J. Johnson was because the employee failed to show up for work until two hours after being scheduled to take out company equipment on a run. The said William J. Johnson had been with the company only ten days and good business practice will not permit retaining employees who cannot show up for schedules on time.

10. Further answering, this respondent alleges that the reason for the dismissal of E. W. Richins, Jr., was occasioned by the fact that he tore up a transmission. Tearing up a transmission, as a general rule, means that the employee does not properly shift gears at the proper speed or does something that would not otherwise be generally done if they were efficiently operating the equipment.

Any other employee would be similarly dismissed.

11. Further answering, this respondent alleges that Harry Almada was dismissed solely for the reason that he failed to "bump tires", a company rule being that said tires were to be bumped every seventy or eighty miles, the places being at the end and beginning of each run and also at Deming, New Mexico, and Willcox, Arizona; that said Harry Almada failed to bump the tires at Deming, New Mexico, and as a result thereof, twenty miles beyond, a tire was melted and torn up.

12. Further answering, this respondent alleges that the operation between El Paso, Texas, and Arizona points is a new operation and respondent was put to hiring a substantial number of employees within a short time; that, as a result thereof, all of the qualifications required of a driver for this type of equipment could not be checked and it was to be expected, therefore, that every employee hired would not have a permanent job; that no employee was fired or dismissed because of any Union activity.

Wherefore, respondent prays that this complaint be dismissed and that no unfair labor practices be attributed to this respondent.

TEXAS INDEPENDENT OIL
COMPANY,

/s/ By M. A. QUISENBERRY,
LANGMADE & SULLIVAN,

/s/ By S. W. LANGMADE,
Attorneys for Respondent

Duly Verified.

GENERAL COUNSEL'S EXHIBIT No. 3

To All Line Drivers of Texas Independent Oil Co.:

No. 1—All charts must be signed by both drivers and dated with the truck number, including starting point and destination. This is a must for your own protection as well as that of the Company.

No. 2—Top speed is 50 miles per hour. This means all drivers on all trucks.

No. 3—All drivers must have a physical examination and application papers in the office file.

No. 4—No driver shall hook a Company piece of equipment to a stalled truck or a stuck truck without authority from this office.

No. 5—Every driver is responsible for his own trip card. If your check is short, it is probably due to the fact that your trip card was not made out correctly.

No. 6—No test runs on any Company equipment without orders from this office.

No. 7—There is being an unwarranted amount of time wasted on the road and changing drivers in Tucson. When these trucks are not rolling, the Company is not making any money and neither is the driver. Round trip from Tucson to El Paso should be made in 18 hours. The trip from Tucson to Phoenix in 7 hours. These trucks must make the round trip Phoenix to El Paso and return in 25 hours. At the rate of 50 miles per hour this leaves plenty

of time for loading, unloading, tire checks, and coffee stops.

No. 8—Drivers will bump tires at least every 80 miles and check transmission and hubs for heat.

No. 9—El Paso-Tucson drivers are responsible for the condition of the equipment. This includes mechanical, cleanliness and looks.

No. 10—All traffic tickets drivers receive on the road for traffic violations will be paid for by the drivers themselves unless the violation is due to faulty equipment.

No. 11—Tampering with tachograph clocks on trucks will be grounds for immediate dismissal.

No. 12—Drivers are not to work on the motors, pumps or thermostats.

No. 13—For no reason shall a driver let anyone else ride on the truck with him unless it is a company employee or a student authorized by this office.

No. 14—On all phone calls, date must be listed, who called, where to and how much and signed by the driver.

No. 15—No money shall be advanced to drivers on pay checks nor out of petty cash. Drivers will have to figure out their own financial troubles.

/s/ M. A. QUISENBERRY

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Allen P. Schoolfield, Esq., for the General Counsel; Mr. Howard D. Grant, of Tucson, Ariz., for the Charging Union; Stephen W. Langmade, Esq., of Phoenix, Ariz., for the Respondent.

Before: David F. Doyle, Trial Examiner.

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended, herein called the Act, was heard at Tucson, Arizona, on October 6 and 7, 1953, pursuant to due notice to all parties. The complaint, dated September 17, 1953, issued by the General Counsel of the National Labor Relations Board and duly served on the Respondent, was based on charges duly filed and amended by the above named Union. It alleged in substance that the Respondent, from on or about April 11, 1953, (1) had interrogated its employees concerning their union affiliations; had coerced its employees against joining or maintaining membership in the Union and had kept under surveillance the meetings of the Union; and (2), on specific dates alleged in the complaint, had discharged certain employees for engaging in union or concerted activities, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Sections 2 (6) and (7) of the Act.

Respondent in its duly filed answer, admitted the

jurisdictional allegations of the complaint, and that the Union was a labor organization within the meaning of Section 2 (5) of the Act, but denied the commission of any unfair labor practices and alleged affirmatively that it had discharged the employees named in the complaint for cause.

All parties were represented at the hearing, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings. Oral argument was presented by the General Counsel, and the Respondent filed a brief.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of the Respondent.

Upon the pleadings and a stipulation of the parties, I find that the Respondent is a corporation duly organized and existing under the laws of the State of Arizona. It has its principal office and place of business in the city of Phoenix, Arizona, and has been at all times herein mentioned continuously engaged in the transportation and sale of gasoline and petroleum products. In the course and conduct of its business during the 12-month period ending June 30, 1953, the Respondent purchased equipment consisting of trucks, tractors, trailers, and related items valued in excess of \$75,000, of which more than 85 percent was shipped in interstate commerce from points outside the State of

Arizona to Respondent's place of business at Phoenix, Arizona. During the same period, Respondent sold and transported gasoline and petroleum products, valued in excess of \$1,000,000, of which more than 95 per cent was shipped in interstate commerce from points outside the State of Arizona to points located in the State of Arizona. It is conceded, and I find, that Respondent is engaged in commerce within the meaning of the Act.

II. The labor organization involved

On the pleadings, I find that the Union is a labor organization with in the meaning of Section 2 (5) of the Act.

III. The unfair labor practices

A. Undisputed facts.

The Respondent has been engaged for many years as a distributor of gasoline and petroleum products in the State of Arizona. In April 1953 the Respondent changed materially its transportation operations, by discontinuing the importation of petroleum products from California refineries by railroad or contract carriers, and by setting up its own trucking system to bring its supply of gasoline into Arizona from refineries located in the State of Texas, principally at El Paso. For this purpose a trucking operation was instituted between El Paso, Texas, and Phoenix, Arizona, a distance of 427 miles. A division point was established at Lordsburg, Arizona, which is 230 miles distant from Phoenix. By the operation, loaded trucks were driven by drivers from El Paso to Lordsburg. At

that point the driver of the loaded truck transferred it into possession of a driver who drove the remaining distance to Phoenix. The driver who had driven the loaded truck from El Paso then drove an empty truck back to El Paso. By this system drivers drove from El Paso and from Lordsburg with loaded trucks, and returned with empty trucks to El Paso or Lordsburg. The first operations were instituted on approximately April 15, 1953, with a single truck and driver, but the trucks and drivers were rapidly increased until at the time of the hearing, six months after the institution of the operations, approximately 26 truck drivers were employed.

M. A. Quisenberry was employed by the Company to set up the operation and to employ the men necessary to institute and maintain operations between Phoenix, Lordsburg, and El Paso. Certain features of Quisenberry's conduct in this regard are called into question by the complaint.

The Issues

At the hearing many employees testified credibly that at the time they were hired by Quisenberry they were interrogated by him as to their membership in the Union, and that they were told that the operation was to be a nonunion job, and that they were to refrain from union activities. Quisenberry admitted that he had interrogated the prospective employees about their past and present union affiliations, and had told them that he did not want the job organized as a union job until the operation

of the truck route had become firmly established, and that he had urged the employees to refrain from union activities until that time. Consequently there is not much dispute as to much of Quisenberry's conduct. His conduct found to constitute specific violations of Section 8 (a) (1) based on this testimony, will be set forth later herein.

The vigorously contested point at issue between the parties is contained in the allegation that the Respondent by Quisenberry discriminatorily discharged the following men on the various dates hereafter set forth, for engaging in union activities in violation of Section 8 (a) (1) and (3) of the Act:

Kenneth Van Horn: Discharged May 12, 1953; rehired approximately September 28, 1953.¹

John Cox: May 15.

William J. Johnson: May 15.

E. W. Richins, Jr.: May 25.

Harry Almada: June 3.

Sidney Bailey: July 6.

Robert Dayton: Laid off for two full days beginning September 8.

The General Counsel and the Union contend that each of these men was discharged for a discriminatory reason, while the Respondent contends that each of the men was discharged for cause.

It is worthy of note, that the complaint of the General Counsel names as a discriminatee every truck driver discharged by the Respondent from

¹ All dates in this report are in the year 1953, unless shown otherwise.

the date of the institution of the trucking operation, until the date of the hearing, with one exception. That driver, not named in the complaint, had an accident which resulted in the destruction of his truck by fire. That particular driver is not involved in this proceeding. However, all other men discharged by the Company are alleged to have been the objects of discrimination, while the Respondent contends that all of these men, were discharged for cause.

The General Counsel contends that upon the evidence as a whole, it is clear, that Quisenberry's antipathy to the Union, motivated his discharge of the specified employees. However, the Respondent argues that, admitting that Quisenberry committed certain violations of the Act in his hiring procedure, the specified employees were discharged for inefficiency, or grave breaches of Company rules, and that Quisenberry's illegal conduct, or any inference based thereon, does not outweigh its proffered proof that the men were discharged for cause.

B. The first group of discharges.

1. The discharge of Van Horn.

Van Horn was employed on May 2, and discharged on May 12. At the time Quisenberry interviewed Van Horn for employment, he asked Van Horn if he was a member of the Union. Van Horn said that he was a member of the Union and that he was on a withdrawal card from the Long Beach, California, local. Van Horn was hired. His employment was uneventful until May 12. On that date he

was at the 84 Truck Stop at Tucson with Quisenberry waiting for his scheduled truck. When the truck came in he stood up to go, but Quisenberry told him to wait. Quisenberry then asked Van Horn with whom he had talked while in Phoenix on the previous day. Quisenberry then explained that Van Horn, while unloading gasoline at the retail gasoline station known as Blakely No. 1, had talked to an old man. Quisenberry said that as soon as Van Horn had left the gasoline station, the old man had proceeded directly to "Old Man Steele" (the Vice President of the Respondent) and told him that Van Horn was instigating the Union among the drivers, and in consequence Quisenberry had been given orders to discharge Van Horn. Van Horn denied to Quisenberry that he had said anything out of the way to the old man. He explained that he had passed the time of day with the old man, who had inquired about several of the drivers, and then had inquired how the drivers were getting on with the union deal. Van Horn had told the old man that there hadn't been too much talk about the Union, except that some union application blanks had been passed among the drivers. When the old man had asked Van Horn for his estimate of whether the job would be organized, Van Horn had replied that perhaps some day it would be organized. Van Horn said that constituted the entire conversation, and that there was nothing to it. Van Horn told Quisenberry that the latter was giving him a "chicken deal," that he had not said anything out of the way to the old man, and that he

had never tried to instigate the Union among the drivers. Despite Van Horn's explanation and protest Quisenberry gave him his severance check, which was already made out. Quisenberry then drove Van Horn to the motel where the latter was living. On the way to that place, Van Horn again told Quisenberry that he thought his conduct was "chicken." Quisenberry admitted that it was a "chicken deal" that he was giving Van Horn, but stated that there was nothing he could do about it, since "Old Man Steele" had told him to get rid of the man who was instigating the Union.

On or about September 25, 1953, Van Horn phoned Quisenberry about a job. He told Quisenberry that he needed a job very badly and Quisenberry told him that he needed some drivers in El Paso. Van Horn drove to Phoenix and talked to Quisenberry at the plant, with the result that he went to work on September 28. However, before Van Horn went to work, Quisenberry told him that he was "not going to tell anybody how to vote but he still did not want the Union." Van Horn asked him, if he returned to work and went nonunion, if he would be given his seniority as of May 12. Quisenberry said that he would.

As to the discharge of Van Horn, Quisenberry testified that on May 11, Van Horn was scheduled to take out a truck in the early morning hours. He did not show up at the Truck Stop on time, so Quisenberry dispatched another driver. Van Horn had been late in reporting to take his trucks several times prior to that date. When Van Horn finally

appeared in the afternoon of May 11, he dispatched him on another truck, but on the following morning when he saw Van Horn he told him that he was discharged because he had not shown up to take his trucks out on time.

On direct examination, Quisenberry admitted that he had a conversation with Van Horn relative to his talking to an old man at Blakely No. 1, at the time of Van Horn's discharge. Quisenberry testified that he told Van Horn only that he would rather than the employees did not talk about various aspects of the job to other employees of the Company, and that the conversation with the old man had no bearing upon his action in discharging Van Horn. He testified that he discharged Van Horn for appearing late for work. Van Horn in his turn denied that he was ever late to take out a scheduled truck.

2. The discharge of Cox.

John Cox testified that he began work on April 15 and was discharged on May 15. On or about April 1, in the company of Jensen, another truck driver later employed by the Company, Cox went to Quisenberry's house to apply for a job. The three men talked about trucking operations, the scheduled runs, and the rate of pay. In the course of this conversation Quisenberry asked the men if they belonged to the Union. Cox said that he did not, and Jensen explained that they had belonged to the Union, but both had become delinquent in the payment of dues in 1947. Both men were hired and shortly thereafter went to work. On or about May

1 Cox went to Quisenberry's house to get his load papers. Quisenberry asked him if he was still keeping his Union book paid up. Cox said that he was. A silence then ensued. After a moment Quisenberry asked him how he would vote if an election came up. Cox said that he was undecided.

On or about May 11 or 12, Cox had another conversation with Quisenberry at the 84 Truck Stop in Tucson. On that occasion Quisenberry asked him how he would vote if an election came up, and Cox again told him that he was undecided. On May 15 Cox reported to Quisenberry by phone. Quisenberry told Cox that he wanted to talk to him. When the men met, Quisenberry told Cox that he had received a letter from Tucson and El Paso unions and had thrown it in the wastebasket. He said that he was not "going union." Quisenberry asked how Cox was going to vote if an election came up, and the witness again said that he was undecided. Quisenberry then said that inasmuch as Cox was undecided, and kept his book paid up, maybe he had better get out and get a union job. Cox said O.K. Quisenberry told Cox to figure up his trip sheet, and that he would have his check ready for him on Monday.

According to Cox, in this conversation Quisenberry said that he knew he couldn't fire a man for joining a union but he would find a reason and make it stick. Cox asked what kind of a reason he was going to use on him, and Quisenberry replied that he was going to use the tachograph chart which showed that Cox had been running at 58 miles an hour, in violation of the Company speed limit of 55

miles an hour. Explaining this conversation, Cox testified that on his second trip in Truck 7 he had told Quisenberry that when the truck motor was making 1700 r.p.m. its speed was well below the speed limit. He asked Quisenberry's permission to run the motor at about 1900 r.p.m. and Quisenberry had given him permission to do so.

On the following morning Cox went to get his check. According to his testimony, when he saw Quisenberry, he said "What in the hell did you fire me for, Quisenberry? I know it wasn't because I was running 58 miles an hour. The only thing I can figure out is because I was union." Quisenberry then admitted that was the reason he had been discharged. At that point the telephone rang and the subject was dropped.

Cox also testified that about 10 days after the last-mentioned conversation he and William Johnson, another allegedly discharged employee, saw Quisenberry at the 84 Truck Shop. They conversed on this occasion, and Quisenberry said he wished that the union situation would be resolved one way or another, that he was tired of the in-between situation. Quisenberry said to the men that if the job went union, he wanted Cox and Johnson back, because he could always depend on them.

On cross-examination Cox admitted that in applying for a job he lied to Quisenberry about the fact that he was a member in good standing with the Union. He admitted that he was a fully paid-up member at all times, but explained that he had lied because he had heard rumors that the job was a

nonunion job. Cox denied that he was ever warned about exceeding the Company speed limit of 55 miles an hour.

Quisenberry testified that Cox was discharged for speeding. Quisenberry readily admitted that on several occasions he had told the better drivers on the job, such as Turner, Cox, Almada, Johnson, and Dayton, that they were to exceed the speed limit in order to get to the refinery before it closed. But he explained that he didn't mean by those specific orders to permit the men to run in excess of 55 miles an hour whenever they wished. He learned from the tachograph charts that Cox on three or four occasions had driven for long distances at sustained speeds of 60 and 65 miles an hour. That was a different situation than a driver occasionally going 60 miles an hour in order to pass another vehicle on the road. Quisenberry stated that he had spoken to Cox about speeding on May 12, telling him that he didn't want the trucks driven at speeds over 55 miles per hour unless he gave specific orders. On May 15 he called Cox into his office in his home and showed him his tachograph chart and said, "Johnny, we can't go for this kind of stuff. We'll have to let you go."

Harry Almada, another discharged employee, in his testimony also shed some light on the Cox discharge. Almada testified that a few days after Cox was discharged Quisenberry had a conversation with Bill Richins, another employee, later discharged, and himself in front of Almada's house. On this occasion Quisenberry said that when Cox applied

for a job he had asked him if he was in the Union and that Cox had replied in the negative. On that assurance, Quisenberry had given Cox a job. A few days later Cox borrowed \$20 from Quisenberry. And then a few days later, Quisenberry learned that Cox carried a fully paid-up book in the Union. He told the men that made him so mad, that he let Cox go. Quisenberry also told the men that he had fired Cox because he felt Cox would cause Quisenberry trouble later on.

3. The discharge of Johnson.

William Johnson was hired by Quisenberry on or about April 28, and his employment was terminated on May 15. Johnson testified that he was taken to Quisenberry by a friend who told him of the possibility of a job with the Company. Quisenberry asked Johnson about his prior driving experience and then asked him if he had a union book. Johnson said that he had a paid-up book. Despite this, Quisenberry then said that Truck No. 11 was coming into Phoenix in about three days and that he would put Johnson on that truck. Johnson stated that thereafter Quisenberry did not talk about the Union although the two men conversed quite frequently.

On or about May 15 Johnson came in on a run from Phoenix and talked to Quisenberry at the 66 Truck Stop. In the course of the conversation, Quisenberry talked at some length about the Union and said that he might transfer the operation to El Paso. He said he was not going to have union drivers driving for him. Johnson replied that he

was a union man and always would be, and that ended the conversation. Johnson testified that from this conversation he concluded that Quisenberry had given him his choice of giving up either his union membership or his job. Thereafter, he did not go back to work for the Company.

On cross-examination this witness reluctantly admitted that on the morning of his termination, he had arrived at the Truck Stop, to take out his truck, about 15 minutes after the truck had left with another driver. He admitted that he was late for his scheduled run. Johnson also admitted that at no time in the conversation on this morning had Quisenberry told him that he was discharged or laid off.

On recross-examination, Johnson again testified that between the time of his hiring and his final day on the job Quisenberry had not talked to him about the Union, but later in his testimony he said that it was put to him so many times that he would have to give up his book, to work for the Company, that he concluded he was discharged.

Quisenberry testified that Johnson was employed by the Company for approximately three weeks, ending his employment on May 15, 1953. Quisenberry said that Johnson was not discharged, that Johnson simply did not come back to work. Quisenberry stated that when Johnson was hired on approximately April 25 Quisenberry told him that he would rather have the job stay nonunion until he got all of the trucks in operation and had the operations running smoothly. Johnson said that would be

all right with him, and that was the extent of the conversation as to unions on the day that he was hired. Quisenberry testified that on the day Johnson's employment ended, that Johnson did not appear for his scheduled run so Quisenberry after some delay procured another driver and dispatched him on the run. When Johnson showed up some time after the truck had left, the men sat around and conversation turned to the Union. Quisenberry told Johnson that he wanted the men to wait until he had the operation lined up and started before he engaged in negotiations with the Union. Johnson said that he was a union man and always would be. Quisenberry replied that he didn't blame him a bit, that he too had belonged to the Teamsters Union in the past. After that conversation, Quisenberry stated, Johnson simply did not show up for work any more.

Johnson also testified that he was with Cox in the truck stop when Quisenberry said to them that he was tired of the in-between situation with the Union, and that in the event the job went union, he would like Cox and Johnson back.

C. Union organizational activities; the filing of the representation petition and the filing of the original charge herein.

It is noteworthy that up to that point in time, May 15, there appears to have been no organizational activity by officials of the Union. The only reference to any organizational activity was by Van Horn who mentioned that application blanks for the Union were passed among the men. Jensen, an-

other employee, later testified that he obtained signatures of employees to approximately 11 union application blanks, 7 or 8 from men at Tucsos, and the remainder from men at El Paso. Also approximately two of the employees mentioned that they had signed application blanks of the Union. However, this activity appears to have been of a clandestine nature and to have occurred an appreciable time after May 15. There appears to have been no open organizational activity by anyone prior to May 15 which might have contributed to Quisenberry's fears of immediate unionization.

However, on May 15, 1953, the Union filed a representation petition with the Board, seeking certification as bargaining agent for the employees in the trucking operation, and on May 16, 1953, the Union also filed the original charge in this case, alleging that Cox and Johnson had been discriminatorily discharged. Copies of both documents were served on the Company. Further discharges occurred.

D. Second group of discharges.

4. The discharge of Richins.

F. W. Richins, Jr., began his employment on April 28 and was discharged by Quisenberry on May 25. Richins testified that just prior to his employment he called Quisenberry on the phone and asked him for a job. In the telephone conversation, Quisenberry inquired about Richins' union standing, and Richins told him he had a withdrawal card since 1946. Later the men met at a drugstore at Lordsburg and discussed aspects of the job. Richins asked Quisenberry why he was interested in his

union connection. Quisenberry replied that he was looking for a nonunion crew, but that Richins had been inactive in the Union so long, that he felt he would not have to worry about Richins, and he agreed to give Richins the next truck into Lordsburg. A few days later Richins heard that Quisenberry had promised the job to some other people so Richins went into Tucson to ask Quisenberry about it. Quisenberry said that he had three trucks that would start in the very near future and that Richins would get the next truck and not to worry about it. Richins said that from that day until a few days before his discharge he had no conversation with Quisenberry about his union affiliation.

On that date, May 22, he was in the company of employee Almada on the street in front of Almada's house when they had a conversation with Quisenberry. Richins testified that in this conversation Quisenberry said that he knew he shouldn't ask them how they were going to vote in the election, but that he wanted to know. Richins did not know what to say. He had a withdrawal card from the Union but did not want to jeopardize it in any way, and at the same time he didn't want to jeopardize his job. So he equivocated; he told Quisenberry that he would not "Cut off my nose to spite my face." Quisenberry turned to Almada, and was about to ask Almada how he would vote, when he checked himself and said that he didn't have to ask Harry; he knew what the answer would be. In answer to a leading question put by the General Counsel, Richins testified that on numerous occasions Quisen-

berry told him that if the men voted for the Union they would vote themselves out of a job.²

Richins testified that on May 25 he went to the Dixie Drive Cafe on the east side of Lordsburg preparatory to taking his truck on its run. He had no phone at home, and there was no other way of the Company communicating with him, so he was in the practice of just being where the truck would be, at the appointed time. When he arrived at the Dixie Drive Cafe, three trucks and three drivers were there. One of the drivers asked him which truck he was going to take. Richins said, "It looks like I am not going to take." Then Quisenberry, who was present, told him that "They had put the pressure on him in Phoenix" and he had to let Richins go. When asked what the witness understood by the phrase, "They had put the pressure on him in Phoenix," the witness said that he "assumed" that it was probably his union connections or something of that nature.

However, Richins stated that at this time Quisenberry told him that he was being discharged because he had had transmission failure in his truck. When asked when he had the transmission failure, the witness answered on the 23d, and then corrected himself, saying it was about two weeks before the date of his discharge.³

The witness also testified that in early June, after his discharge he ran into Quisenberry who said that

² Tr. page 76.

³ Tr. page 77.

he had heard that Richins had filed charges against him with the National Labor Relations Board. Richins said that he didn't know that he had gone that far, but admitted that he had filed an affidavit with Bill Stratton, a union official, stating what took place. He said that on this occasion Quisenberry wanted him to withdraw the charges, and when the witness said that he would not, Quisenberry said that in the event the Union was able to put him back to work, Quisenberry would find means of getting rid of him; if nothing else, he would starve him to death by holding back on his runs. Also Quisenberry said that when men were discharged he put on their personnel record whether they were suitable for rehire or not, and in his case he had placed Richins in the employable category until Richins had filed charges with the Board against him. Then he had placed him on the ineligible list. Also Quisenberry on this occasion told him if he dropped the charges he could move to El Paso and go to work.

On cross-examination, the witness admitted that, while he had driven heavy equipment before being employed by the Company, this was his first diesel experience. The witness also said that when the transmission failed on the truck it was patched up on the roadside near Lordsburg, and then driven to Phoenix to the repair shop of the Company. Richins testified that gears have to be shifted when the motor is going at the proper number of revolutions. If gears are shifted without the motor being at the proper speed, it is destructive of the transmission.

Changing the gears when the motor is not running at the proper speed is called "jamming" the gears in place.

On cross-examination, when pressed as to whether Quisenberry had actually told him that because he had filed charges he would never be put back to work, the witness replied that he "assumed" that if he withdrew the charges that he could go back to work and there would be no friction between them, but then testified that Quisenberry said there would be friction if the Union forced him to put Richins back to work. When asked directly by the Trial Examiner if Quisenberry ever said to him that "because he had filed charges with the Board the Company would not reemploy him," the witness replied in the negative. The witness also stated that after he had the transmission trouble he made two or three more runs in the same truck. It had been repaired after two or three days. The witness also testified that the truck was in need of repair all the time that he drove it. He insisted that he experienced trouble with the transmission only once, and that after it was repaired at the shop at Phoenix, he experienced no further trouble with it.

Harry Almada, previously referred to, also testified in regard to the discharge of Richins. He stated that a short time after Richins was fired Almada had a conversation with Quisenberry and another employee named Beeson at the Dixie Truck Stop. On that occasion Quisenberry said that Bill Richins was a good fellow and he hated to let him go, but he was too thick with his cousin, Art Richins, who

was poking union ideas into Bill's head, and that Bill Richins would vote against Quisenberry at the election, so Quisenberry had to let him go. On a second occasion, a few days later at Almada's house, Quisenberry repeated the statement.

As to Richins' discharge, Quisenberry testified that when Richins' truck, No. 11, was put in service on the route it had a transmission with a rattling fifth gear. It did not jump out of gear but it made a noise, so the Company installed a new fifth gear. At the time the new fifth gear was installed, Quisenberry saw the transmission when it was taken apart at the shop, and he noted that all other gears were in good shape. Later when the mechanic brought the truck back after the patch-up job at Lordsburg and took it apart, Quisenberry examined it, and saw that every gear in it, starting from the first gear upward, had the teeth on the edges of gears rounded off, showing that somebody had been jamming the truck into gear. However, the cause of the breakdown at Lordsburg had been that the fifth gear had broken and fallen off, blocking the other gears. Quisenberry stated that the rounding of the gears could not have happened in any other way or at any other time because he had seen the gears when they were out of the truck on the prior occasion. This time an entirely new transmission was put in the truck and it was given back to Richins, who was still on the job. Richins made about three trips in the truck and the fifth gear started to rattle again and jump out of fifth gear. Richins couldn't keep it in fifth gear. Quisenberry believed Richins was respon-

sible for the damage to the transmission due to his lack of experience, so he fired him. Quisenberry had the truck taken to Phoenix and when the gears were taken out of the truck he again inspected them. The gears which had been installed as new some few weeks prior were in the same shape that the old gears were in when they were removed. The corners of the gears were rounded off, showing again that somebody had been jamming the truck into gear. Quisenberry testified with some vehemence that he would fire his brother if he handled a transmission that way.

Quisenberry explained the manner of Richins' firing at the Dixie Truck Stop. He said that Richins had no phone, and the only way he could contact Richins by phone was through Richins' sister-in-law. On May 25 he had tried to call Richins through the sister-in-law but had been unable to reach him. He had already assigned another driver to take Richins' place. When he couldn't reach Richins by phone, he waited until he saw Richins at the Truck Stop. He said to Richins, "Bill, I am firing you because of that transmission." Richins said, "Well, I take it I am fired for union activities," and walked off.

As to his proficiency in shifting gears, Richins, in his testimony, said that he had been given a "test hop" by Bill Turner on one occasion and had a second "test hop" with Almada on another occasion. He had passed both these tests successfully. Employee Turner also testified that on his "test hop" Richins had shifted gears satisfactorily.

As to the hiring of Richins, Quisenberry in his testimony admitted that he had inquired about Richins' affiliation with the Union at the time of hire. He also admitted that he told Richins that the Company was paying 6 cents a mile wages, while the McNutt Oil Company in El Paso, which trucked gasoline into Arizona pursuant to a contract with the Union, paid only 5½ cents a mile. Quisenberry also admitted that he did speak to Richins about the way he would vote in the event an election was held. He admitted that he said to him on May 22, "Off the record, I really shouldn't ask you, but how will you vote if we have an election." Quisenberry denied that he told Richins or anybody else that the men were going to vote themselves out of a job.

5. The discharge of Almada.

Harry M. Almada was employed by the Company from April 13, 1953, until June 3, 1953. He testified that he first talked to Quisenberry in regard to a job on Saturday, April 11. Quisenberry came to Almada's home and asked him if he was looking for a job, stating that he was starting a new operation, trucking gasoline between Lordsburg and El Paso. Almada said that he wanted a job. Quisenberry asked him if he belonged to the Union and Almada told him that he had a union book and was in good standing. According to Almada, Quisenberry then said, "That lets you out because I am not hiring any union men. I am hiring all nonunion men because I don't want a union outfit." Quisenberry further explained that he didn't want any trouble with the Union or to be delayed by the Union, and

then suggested that Almada drop his book and withdraw from the Union. Almada agreed to do that, if Quisenberry would hire him. Quisenberry then said if Almada would promise not to instigate any union activities that Almada could have a job as long as he wanted it. With that understanding, Almada was hired.⁴

On April 13, about 7:30 a.m., Quisenberry called Almada and told him that he had a truck waiting for him. Almada went to the Dixie Truck Stop, where he met Quisenberry with the truck. Quisenberry said that he would "test hop" Almada by driving with him from Lordsburg to El Paso. The men rode from Lordsburg to El Paso and back. In the course of the ride, Quisenberry explained to Almada why he didn't want the Union on the job. He said that at one time he had belonged to the Union and that he was of an ambitious nature and that the Union had held him back. When he started working without the Union he had made progress. Quisenberry said that the job would be a good deal without the Union. In the course of the ride to El Paso and return, Quisenberry and Almada discussed the speed at which the trucks containing gasoline should be driven and both agreed that 55 miles per hour was a proper Company speed limit. They also discussed how often tires should be "bumped," a process by which all the dual tires on the truck are kicked or hit with a tool to make sure that they are all properly inflated. All equipment used by the Company had dual tires. This was a matter of im-

⁴ Almada and Turner were the first two drivers employed, both beginning work on April 13.

portance because in the event one of the dual tires went flat, the weight of the load would be taken by the remaining tire, but as the truck was driven, friction would generate heat which would ultimately burn up the flat tire. Both men agreed that the tires should be bumped at approximately 60-70 miles and Almada suggested that tires should be bumped at the beginning of each run and at Las Cruces and Deming. Quisenberry also told Almada that he was the only one who read the tachograph charts showing the speed of the trucks, and that on some occasions he might have to tell the men to disregard the charts. Almada stated that on several occasions in the early days of the operation the men were told by Quisenberry to disregard the charts and to get to the refinery at El Paso before it closed. This would entail exceeding the Company speed limit of 55 miles per hour.

Almada was an experienced truck driver and it is apparent that Quisenberry had a high regard for Almada's ability, for soon after the operations were commenced, he asked Almada to oversee the job at the Lordsburg end. At that time Quisenberry was making his Lordsburg headquarters at Almada's house and frequently discussed the operations with Almada. Almada refused to oversee the job because he felt that he might get in bad with the other drivers. However he recommended other drivers to Quisenberry, who hired the men. Among them were Bill Richins, Harry Payne, and Joe Delgado. Almada testified that he had a conversation with Quisenberry on or about May 25, 1953, at the Dixie Truck Shop in reference to the firing of

Richins. This conversation has been related previously, as has another conversation between Almada and Quisenberry in regard to Cox.

About May 15 Quisenberry called Almada at home and told him that he was on the spot; that the "Old Man", Horace Steele, the Company Vice-President at Phoenix, was mad at Quisenberry, and had told him to get rid of a certain man because he was union all the way through. Quisenberry said he had asked who the man was and Steele had said that it was Harry Almada in Lordsburg. Steel said that he wanted Almada fired. Quisenberry told Almada that he was "in a terrible spot." Quisenberry then told Almada that he would have to send his withdrawal card back to Fred Bone, the union representative, and tell him that he wanted no part of the Union. Almada said that he couldn't do that. Whereupon Quisenberry said that it was either that, or else. Almada said that he had kept his word with Quisenberry and hadn't caused any union activity. Quisenberry said that Fred Bone had told him that Almada was a staunch union supporter and that Almada was ready the minute he gave the word. Almada asked Quisenberry to give him time to call Bone in El Paso because Bone had given Almada his word of honor not to interfere in any way with the job, because Bone knew Almada needed the job very badly.

When Almada called Bone, the latter told him that he did not know Quisenberry, that he had never met the man, or talked to him. Almada called Quisenberry back and told him what Bone had said.

Quisenberry said that he had to do something to tie his men in on one side of the fence or the other. Almada again stated that he could not let go of his withdrawal card, that he would need it some of these days. Quisenberry said that it was either that, or else. Quisenberry said he was going to Phoenix and would talk to the "Old Man" and when he got back he would let Almada know one way or the other. He said that meanwhile, Almada was not to take his usual run. However when Almada's truck came in his "breaking partner" said he had everything fixed up and Almada was to take his regular run. This occurred around the middle of May. Almada continued working until the day he was discharged on June 3, 1953.

Almada testified that on June 2, about 11 p.m., he went to the Dixie Truck Stop at Lordsburg to fuel his truck. He had to wait while other trucks were serviced and he became worried that he couldn't make the schedule. When he left there he tried to make up lost time. Almada admitted on cross-examination that he had been given orders to "bump" his tires about every 60 miles and that tires were to be bumped at Deming and Las Cruces. He had reached a point between Deming and Las Cruces, about 15-17 miles west of Las Cruces, when he noticed that something was wrong. Almada stopped his truck and found that one of his tires was flat, and had started to burn. He went for his two fire extinguishers but found them dead. Two other trucks of the Company and another truck stopped and the men took the tire off the wheel. Almada left the

tire in the desert to cool and continued his run. He went to the refinery and on the way back he picked up the tire from the desert, and credled it back on the trailer so Quisenberry could see it. On his return to Lordsburg, Quisenberry called him to tell him that Quisenberry was going to El Paso, and wanted the men there. Almada told him that he would meet him there, and told Quisenberry that he had burned a tire on the road. Quisenberry said that he would examine the tire at Tucson. About midnight that night, June 3, Quisenberry called Almada. He said that he couldn't have the men burning tires up and down the road, and that George Wallsmith was going to take Almada's truck, that he had to let Almada go. Almada had no further words with Quisenberry.

On cross-examination Almada stated the facts about flat tires on dual-tired vehicles, about which there appears to be no dispute. He explained that when a tire is driven flat for an extended period of time, it smokes and smoulders until the vehicle is stopped, when the tire will often burst into flame. Almada stated that the tire would start to burn after it had rolled about 10 miles in the heat of the day or about 15 miles at night if the truck was driven fairly fast. He also agreed that if the truck was empty it would not catch fire for a longer distance. Almada stated that he bumped his tires at Lordsburg but not at Deming and that he was about 80 miles from Lordsburg when he noticed that the tire was smoking, and stopped. He also admitted that the tire was left on the side of the road because

it was smoking and too hot to be put on the spare tire rack.

Quisenberry testified that in hiring Almada he told him that he would rather that the job be non-union until he had all the trucks in operation and the lines set up. After all the trucks were in operation and the lines were set up, he had said on many occasions that he did not care whether the job was union or not. Quisenberry did not recall whether he had told Almada to get a withdrawal card or not. He said that he did tell Almada that he wanted a smooth operation and didn't want any bickering back and forth until he got the operation started. He also corroborated Almada as to the conversation relative to "bumping" on Almada's test hop. He had issued orders that the tires were to be bumped at the beginning of each run and at Deming and Las Cruces. The place where Almada's tire was taken off the truck was about 20 miles east of Deming, so Almada had driven about 80 miles from Lordsburg without bumping his tires. Quisenberry first saw the tire lying beside the road. When he examined the tire, it was burned up. From his experience, Quisenberry testified that to burn a tire that badly, while it was being driven at night, on an empty trailer, would require about 35 miles of flat driving. Quisenberry also stated that the cost of a diesel cab and trailer unit is approximately \$30,000. He also agreed with Almada that a tire which is driven some distance flat will break into flame when the vehicle is stopped, and added that it will also break into flame while rolling if it is driven a

long distance flat. Quisenberry saw the tire, and called Almada and discharged him. He called Almada before he made his next run and said, "Harry, I'm going to have to let you go because of that tire." Almada said, "I take it I am fired for union activities." He said, "No, Harry, you are fired because you burned up a tire and left it lay beside the road because it was so damn hot you couldn't get it back on the tire rack." Quisenberry stated that he employed everyone brought to him by Almada, that he thought a lot of Almada's judgment on the capabilities of drivers, and that the men recommended by Almada had been good men.

6. The discharge of Bailey.

Sidney W. Bailey was employed by the Company from May 25 until he was discharged on July 7. Bailey testified that at the time he was employed he was asked to fill out an application blank given to him by Quisenberry. One space on the application blank which asked for "Activities other than religious," he did not fill out. Quisenberry asked if he belonged to the Union. He told Quisenberry he had a Union book, but that his dues weren't paid to date. Quisenberry handed him back the application and told him to put the name of the Union in the blank space. He complied and gave it back to Quisenberry. Quisenberry then told Bailey that he did not want the Union in the operation. Bailey told Quisenberry that he belonged to the Union but would not cause any trouble. Bailey also testified that he did not engage in any union activities until after he was fired, when he signed a complaint

against the Company. Bailey was at El Paso when Quisenberry called him on the phone and told him he was fired. Bailey inquired as to the reason for his discharge and Quisenberry said that he was firing him for pulling the compression release on his truck. The witness told Quisenberry that was a poor excuse. Quisenberry then said, "Well, I have to have some sort, and it is the best one that I can think of."

On cross-examination, Bailey testified that he had pulled the compression release on every occasion that he killed the engine, that being the proper procedure to kill the engine. When cross-examined as to pulling the compression release when the truck was traveling at road speed, he stated that he had pulled the compression release on one occasion when a fuel line had broken on the motor, and the motor had run away, and on another occasion when the motor had "taken air." Bailey testified that it was not his practice to pull the compression release to clean out the motor, and that he had not talked to other drivers about it being proper to pull the compression release to clean the motor. Bailey denied that at the time he was fired Quisenberry told him, that Quisenberry had followed him while he was driving his truck and noticed that he had pulled the compression release, and threw oil all over Quisenberry's car. He also denied that at the time of discharge Quisenberry had told him that the repair shop had called Quisenberry concerning repairs to Bailey's truck, telling him that the motor had been ruined by someone pulling the compression release.

Upon examination by the Trial Examiner, Bailey admitted that at the time he was fired Quisenberry had said that the shop in Phoenix had told him that "somebody had been pulling the compression release on the truck, and holding it open and running it downhill that way." He told Quisenberry that the only time he ever pulled the compression release was when the truck broke a fuel line, took air, or to kill the engine.

On cross-examination the witness also said that on the night before he was fired he was at the 84 Truck Stop and pulled out his billfold which had a union button pinned in it and that he also took from his billfold his union book where he had a slip of paper with a phone number on it. Quisenberry was present and saw this and said to Bailey, "You still have your book?" Bailey admitted that he had, saying that he had to keep it because some day he might need it to work on a union job. On examination by the Trial Examiner, Bailey said that from the time he was hired until the night he was fired there was never any talk between him and Quisenberry about the Union.

Joseph G. Grossheim, a truck driver employed by the Company, testified as a witness on the subject of Bailey's discharge. Grossheim testified in a clear and forthright manner. He stated that around the end of May or the first of April he "deadheaded" a trip with Bailey, riding as a passenger. As they drove on this occasion, Bailey and Grossheim discussed the practice of pulling the compression release while the truck was moving down the high-

way. Bailey said that pulling the compression release blew the soot out of the motor and cleaned it. Grossheim disagreed violently. He told Bailey that such a practice would blow not only the soot, but everything else out with it, and not to do it. Bailey maintained that such a practice was good for the engine. Grossheim explained to him that all Bailey would do by pulling the compression release was to dump out raw diesel fuel. Bailey disagreed, saying that when you pulled the compression release you could see all the black smoke pour out of the exhaust, and that it really cleaned out the motor. The conversation ended when Grossheim asked Bailey not to do it while he was riding with him, and told him not to be it to Grossheim's truck, if he ever drove it.

Quisenberry admitted that at the time he hired Bailey he asked him to put his union affiliation on the application card. He stated that he purchased this form of application at a stationery store in Phoenix and that the place for "Activities other than religious" was on that card at that time. He explained that he had asked the men their union affiliation from the time he began hiring until about six weeks later, when he was told by Steele, his superior, that the latter thought the questions were in violation of the Act and that he should consult counsel for the Company on that subject. After conferring with the Company counsel, he discontinued the practice.

He said that the truck he gave to Bailey to drive had a brand new engine in it, and shortly there-

after that the truck became "sick." That it was continually missing, and breaking an injector line, and the Company had considerable trouble with it. He had the truck taken into the Phoenix shop for repair on two occasions. After it was in the shop for a third time, the shop crew informed Quisenberry that someone was pulling the compression release on the truck, while it was being driven, thus ruining the engine. Quisenberry began checking the drivers and he learned that Bailey had told several drivers that the way to clean the motor was to hold the foot on the throttle going uphill, and to pull the compression release going downhill. Suspecting that Bailey was pulling the compression release, on one night Quisenberry followed Bailey in his own car. Quisenberry stated that he often did this to check up on the efficiency of the drivers. He stated that on this occasion Bailey drove up a long grade just outside of Benson. Bailey had the truck in about fourth direct, with a three-quarter throttle, when all of a sudden a ball of black smoke came out of the truck and he could hear the motor go "cluck cluck" in such a way that Quisenberry knew the compression release had been pulled. He let Bailey continue to El Paso, and he turned around and went back to Tucson. On the next morning he called Bailey and told him that he had been pulling the compression release on the truck, and that he was fired. Bailey said that he had not pulled the release, but Quisenberry replied, "Bailey, I saw you do it."

The lay-off of Dayton and others.

Robert G. Dayton began employment with the

Company on May 15 and is still employed. When he was hired he was interrogated by Quisenberry about his union affiliation. On September 8 he was told by some of the men that there had been a layoff and that Quisenberry wanted Jenson and Dayton to call him. He called Quisenberry who told him that he wanted him to lay off for a few days. Dayton asked him the reason for his layoff. Quisenberry said, "It is about those applications you have been passing around and those tach cards." Dayton said, "I told you all about the tach cards. Now what applications do you mean?" Quisenberry said, "Those applications you have been passing around." Dayton testified that he supposed Quisenberry meant union applications because he had given one application to another driver who had asked Dayton for an application.

On September 10 Quisenberry called Dayton at his home and told him to contact all the men that had been laid off, and to have them at the 84 Truck Stop as he wanted to talk to them. Dayton asked what was up and Quisenberry replied that they were going back to work just as they had before the layoff. Dayton asked Quisenberry what had been wrong, and he said that it was the damn union deal, that he had received some "bum information from a damn lawyer or something like that." When Quisenberry saw the men at the 84 Truck Stop, he told them that they were all to go back to work, and operations were resumed.

Dayton testified that on several occasions he talked to Quisenberry, who told him that Mr. Steele

was a hardheaded man and that he was not going to see the job go union, and that Steele would jack up the trucks and let them sit, before he would let the job go union.

In his testimony Quisenberry made no specific reference to the incident about which Dayton testified.

In addition to the employees who claimed specific discriminations against them, there were several other witnesses who testified as to various events. William E. Turner testified credibly that he began work for the Company on April 13. When he was hired, Quisenberry asked if he was a member of the Union. Turner said he belonged to the Union, but despite this Quisenberry hired him. Quisenberry also told Turner to send in any other drivers that he found available, but that he wanted nonunion drivers. Turner told Quisenberry that in that part of the country if he wanted to have drivers he would have to take union drivers, as most of them were union. Quisenberry agreed that it looked as though they would have to take union men, so he told Turner to send any men who were good truck drivers and available, whether they were union or nonunion. Turner gave a test hop to Richins and testified that Richins did very well considering that he had had very little experience on heavy diesels. Turner resigned from the job of his own volition.

Alfred Jenson also testified to the circumstances of the layoff of Dayton and others. He testified that on September 9 when he reached Phoenix there

were approximately eight drivers at the truck stop and they told him that "We have had it." They told him that Quisenberry was going to make a change, and that word had been received that he was to call Quisenberry, so Jenson phoned Quisenberry. Quisenberry said he was going to transfer the job to El Paso; he also said, "Thanks for helping me out." When Jenson asked what he had done for Quisenberry, the latter said that Jenson had signed up all the boys in the Union. Quisenberry also said that they were going to take all the men off but seven, and leave seven men with seven trucks and that if they couldn't haul the gasoline with that number of trucks they would ship by railroad. Quisenberry told Jenson that he could come down and work at El Paso, but the witness said that he didn't want to do that, so Quisenberry said, "You have had it."

Jenson testified that he was instrumental in signing men up for the Union, that he obtained the signatures of employees to eleven applications, seven or eight of the men were at Tucson and the rest at El Paso. On cross-examination as to the lay-off Jenson said that on the following morning word was received from Quisenberry that all the drivers were to go back on their regular run. He also admitted that at the time of the layoff he asked Quisenberry if he was fired and that Quisenberry had replied in the negative. He also admitted that the layoff could have been for operational reasons. In the course of Jenson's testimony, the Trial Examiner asked to what the above testimony was di-

rected, and the General Counsel replied that the testimony was directed to establishing the layoff of the group of men for a period of one day. This allegation of the complaint will be later referred to.

Merrill E. Nutter testified credibly that he went to work for the Company in the first part of May. Quisenberry asked him if he belonged to the Union and the witness told him the truth—that he did not. Quisenberry explained to Nutter that he was running a nonunion job.

Nutter became a sort of straw boss on the job, and in late May or early June was given the duty by Quisenberry of instructing applicants for employment how to fill out the application blank, with particular reference to showing the applicant's union affiliation. Quisenberry also directed Nutter to take the filled out applications of employees previously hired, to find out their union affiliation and withdrawal card status, and to note that on the forms. About this time also, Quisenberry in a conversation with Nutter said that a man could not be fired for union activities, but there were numerous other reasons for which he could be fired.

In the latter part of May, Nutter's authority to handle the applications of prospective employees was taken from him. Around September 7 this authority was returned to him. However he stated that he felt that his authority had not been completely restored, and he was doubtful about his status. About the 4th of September, Quisenberry phoned and instructed him to fire Chester Robinson. Quisenberry told him that the reason for Robinson's

discharge was that Robinson had brought some union application blanks from El Paso and was passing them out on the job. However, Quisenberry said that he had just learned that Robinson had driven his truck over a curb, breaking the differential housing and that he was to be discharged for breaking this housing. The housing was broken about three weeks to a month before this conversation. Robinson was discharged but was put back to work, when all trucking operations were resumed after the short layoff of September 8. Nutter testified that on one occasion Quisenberry had asked him about the union membership of Jenson and on a second occasion about that of Richins.

H. B. Sullivan testified credibly that some time after August 21 he was interrogated by Quisenberry as to whether he had a withdrawal card from the Union. On that occasion Quisenberry told him that the job was nonunion. J. H. Beeson and Joe Delgado also testified credibly as to assisting Almada with the burned tire. Two employees, Wallsmith and Sanderson also testified very briefly and in a credible manner.

Motion to Consider Certain Testimony

At the opening of the hearing, the General Counsel moved to amend the complaint to allege (1) the name of Kenneth Van Horn as being discriminatorily discharged on May 12; (2) Sidney Bailey as being discriminatorily discharged on July 6; (3) Lloyd Hinds as being discriminatorily discharged October 1; (4) Chester Robinson as being discrim-

inatorily laid off for six full days beginning on or about September 4, 1953; (5) Robert Dayton, discriminatorily laid off for two full days beginning September 8, 1953; (6) and the names of Employees Nutter, Jenson, Saner, Parker, and Buchanan as being discriminatorily laid off on September 9 for one full day, and to amend certain dates which were typographical errors.

Over the objection of the Respondent, the Trial Examiner permitted all of the amendments, stating that in the event the Respondent pleaded surprise, the Respondent would be afforded an opportunity to prepare to refute any of these new allegations.

At the close of the General Counsel's case, the General Counsel moved to strike the name of Lloyd Hinds from the complaint. In the course of the hearing it developed that Hinds had been laid off while his truck was being repaired, and that the Company had been endeavoring to get in touch with Hinds to notify him that the repairs had been completed and that his services were required. He left the hearing room to go back to work. The General Counsel stated that it had developed that Hinds had not been discriminatorily laid off.

The General Counsel also moved to strike from the complaint all reference to the discriminatory layoff or discharge of Chester Robinson, and all reference to the discriminatory layoff of the five men named above, on September 9. There being no objection from the Respondent, these motions to strike were granted by the Trial Examiner, and the Respondent then put on its case.

After the evidence was closed the General Counsel in the course of his oral summation stated that, although he had moved to strike the above-mentioned allegations from the complaint, and to remove them as issues from the case, he requested the Trial Examiner to consider the testimony submitted to support these allegations, as bearing on the remaining issues in this case. The Respondent objected. He pointed out that the allegations had been stricken, and the charges dropped, at the end of the General Counsel's case, and that consequently the Respondent had not offered any evidence to rebut that testimony, in the belief that the allegations and charges had been dismissed. In his argument, counsel for the Respondent pointed out that without the allegations being in the complaint, much of the testimony admitted under the allegations would have been irrelevant to the remaining allegations, and would have been inadmissible on proper objection.

The Trial Examiner indicated that he felt that the position of the Respondent was correct, but that he would rule on the question in his Intermediate Report. I have considered the motion very carefully and have decided that substantial justice requires that I consider all the testimony as it bears on the allegations of violations of Section 8 (a) (1) of the complaint, for that purpose all of the testimony has relevancy; and that I not consider the testimony introduced to support allegations of discriminatory discharge or layoff, which were later stricken, as bearing on allegations of discriminatory discharge

or layoff, remaining in the complaint, for as to those allegations the testimony would not be relevant. For that reason I have not considered the testimony of Nutter on the subject of Robinson's layoff, or the testimony of Hinds as to his layoff, or the testimony of Jenson as to the layoff of the five named men, including Dayton, as having proper bearing on the cases of the remaining men, allegedly discriminatorily discharged or laid off. All testimony has been considered on the issues of Section 8 (a) (1) and all testimony except the above on issues of Section 8 (a) (3). To that extent, the General Counsel's motion is granted.

Concluding Findings

(a) Interrogation, restraint, and coercion.

From the testimony narrated above, it is established, and not seriously disputed, that in the period covered by the testimony the Respondent by the conduct of Quisenberry violated Section 8 (a) (1) of the Act by interfering with, coercing, and restraining the Company's employees in the exercise of the rights guaranteed to them by Section 7 of the Act. Many of the employees testified credibly that Quisenberry interrogated them as to their union membership and standing at the time of hire. Furthermore he urged, or ordered, various of the employees to refrain from union activities or active union membership, and in Almada's case exacted a promise that the employee would refrain from union activities before the employee was hired. In practically all hiring, Quisenberry by his procedure

left the strong inference in the minds of the employees that their employment resulted from the fact that they were either not in good standing in the Union, or not inclined to promote union activities on the job, and that their chances of continued employment would be seriously affected by their engaging in union activities. Many employees testified to this conduct of Quisenberry in the hiring procedure, and by a rather general admission, and further admissions as to specific conversations, Quisenberry corroborated this testimony. It is also apparent that this conduct of Quisenberry occurred not only at the time of original hire of the various employees, but continued for a considerable period of time after the inception of the trucking operation. From the evidence it is clear, and I find, that the instances of interrogation, restraint, and coercion were not isolated, but were part of a pattern or plan designed by Quisenberry to thwart any organizational activity on the part of the employees. In his testimony Quisenberry stated that he pursued this course because to some extent he was ignorant of the law, and inexperienced in labor matters. He further testified that it was his desire to keep the job nonunion, if possible, until such time as it was well established. I do not credit this testimony of Quisenberry that his intention and desire were so limited. On all the evidence in the case, Quisenberry's intention appears to have been to keep the job unorganized as long as possible. But even if his intention and purpose were so limited, that fact demonstrates the utter illegality of Quisenberry's

conduct. The rights guaranteed to employees by Section 7 of the Act cannot be suspended by an employer to suit the employer's pleasure or purposes. Whether the interference, restraint, or coercion imposed by the employer is intended to be effective for one day, one month, one year, or forever, it is violative of the rights of the employees.

On the basis of the credited testimony of employees named hereafter in specific findings and of Quisenberry, I find that in the hiring procedure, Quisenberry put into effect a plan to keep the men from engaging in union activities, and that this plan was violative of Section 8 (a) (1) of the Act.

Specific Violations of Section 8 (a)(1)

I also find specific violations of the Act, as follows:⁵

Upon the basis of the credited testimony of Almada and Quisenberry, I find that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a)(1) of the Act by the following conduct of Quisenberry:

(a) By his interrogation of Almada on April 11, 1953, in which Quisenberry asked Almada about his union affiliation and told the prospective employee that the Respondent sought to hire only union men, and by exacting from the employee a promise that the employee would not instigate any union activities on the job in the event he was hired;

⁵ Discussion of the credibility of employees and Quisenberry is given hereafter to avoid repetition.

(b) By stating to Almada on approximately May 30, 1953, after employee Richins had been discharged, that Richins was a good fellow but that the Company could not use him because the Company did not want anything to do with the Union, and because Richins would vote for the Union;

(c) By stating to Alamada on May 24, 1953, that employee Cox had lied to him when he had inquired if the employee was a member of the Union, and that later Cox had borrowed \$20 from him, and that he had no use for a man like that, so he had discharged the employee;

(d) By instructing Alamada on or about May 15, 1953, to have nothing to do with the Union; and by telling the employee that he would have to send his withdrawal card to the Union, and tell the Union that he wanted no part of it.

Upon the credited testimony of Cox and Quisenberry, I find that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act by the following conduct of Quisenberry:

By his interrogation of Cox on May 15, 1953, in which Quisenberry asked Cox if he was keeping up his union book.

Upon the credited testimony of Jenson and Quisenberry, I find that the Respondent in like manner violated Section 8 (a) (1) of the Act by Quisenberry's interrogation of Jenson on April 12 as to the union affiliation of both Jenson and Cox and his statement that they would be employed inas-

much as they were not members in good standing of the Union.

Upon the credited testimony of Johnson and Quisenberry, I find that the Respondent in like manner violated Section 8 (a) (1) of the Act, by Quisenberry's interrogation of Johnson as to his union affiliation on or about April 25.

Upon the credited testimony of Richins and Quisenberry, I find that the Respondent in like manner violated Section 8 (a) (1) of the Act, by Quisenberry's interrogation of Richins on or about April 1 as to Richins' union affiliation and his statement to Richins that he was looking for nonunion drivers, and paid better than union scale to keep the job nonunion, and by his interrogation of Richins on May 22 as to how Richins would vote in the election.

Upon the credited testimony of Turner and Quisenberry, I find that the Respondent in like manner violated Section 8 (a) (1) on April 13, by Quisenberry's interrogation of Turner as to his union affiliation, and by Quisenberry's interrogation of Johnson as to his union affiliation and Quisenberry's instruction to the last-named employee to stop paying his dues in the Union.

Upon the credited testimony of Bailey and Quisenberry, I find that the Respondent in like manner violated Section 8 (a) (1) on May 25, by Quisenberry's interrogation of Bailey as to his union affiliation, and his instructions to Bailey to note on his application for employment the fact that he belonged to the Union.

The violations of Section 8 (a) (1) found above,

were alleged substantially in Paragraph 8 (a) through (p) of the complaint. Each allegation has been examined in the light of all the evidence, and the findings set forth above represent the extent to which I have found the allegations established by the credible evidence. Such portions of the allegations set forth in Paragraph 8 (a)-(p), not specifically found above, are hereby expressly not found, on the ground that they are not supported by sufficient credible evidence.

(b) Discriminatory discharges and layoffs.

In reaching a determination as to the legality of the discharges, as hereafter expressed, I have considered and weighed all the evidence as bearing on each discharge because the motive for the discharge of each employee is a question of fact, which must be determined in the same manner as all other questions of fact, on the evidence in the case as a whole.

The determination of these questions of fact involves a weighing of the inference of discrimination arising from Quisenberry's anti-union conduct and other evidence, as against Quisenberry's testimony and other evidence that the discharges were for cause. His anti-union conduct has been found above, so comment on his standing as a witness is appropriate at this point.

In my judgment Quisenberry was a reliable witness within certain well defined limits. He frankly admitted that he had interrogated employees as to their union affiliation and good standing, and had urged them to refrain from union activities, for a limited time. He made further admissions, against

the Respondent's interest, as to certain specific conversations with employees, which established certain violations of Section 8 (a) (1) of the Act. Because these admissions went beyond that required to establish a tactical appearance of candor, I deemed Quisenberry a reliable witness as to many features of his conduct in the hiring procedure, and resolved in Quisenberry's favor, certain conflicts in testimony between Quisenberry and the employees, as to what was said in particular incidents. That the findings of violation of Section 8 (a) (1) are not as broad as those alleged in the complaint, is due in a large measure to the credit I have attributed to Quisenberry's testimony. But when the alleged discriminatory discharges and layoffs are the subject of inquiry, Quisenberry's frankness and candor are much less pronounced. In my judgment, at that point Quisenberry's personal interest, and his employer's interest, exerted such an influence that his testimony became much less reliable. Some parts I have credited, and other parts I have rejected, based on the testimony of the case as a whole, and on Quisenberry's demeanor, bearing, and appearance as he testified as to the seven different charges of alleged discrimination.

The discharge of Van Horn. Van Horn as a witness impressed the undersigned very favorably. On both direct and cross-examination he testified in a clear and forthright manner which carried conviction to the auditor. I credit Van Horn's testimony fully. Quisenberry in his testimony on this subject admitted that he had discussed with Van Horn, just

prior to his discharge, the fact that Van Horn had engaged in a conversation with the "Old Man" at Blakely No. 1 gasoline station on the previous day. Quisenberry's admission affords some corroboration to the testimony of Van Horn. On the basis of Van Horn's and Quisenberry's testimony, I find that Van Horn was discharged because Quisenberry or his superior suspected Van Horn of engaging in union or concerted activities, and not because Van Horn was tardy in attendance on his scheduled runs. In reaching this conclusion I have given some weight among other things to the fact that Quisenberry at a later date rehired Van Horn, an act which would be consistent with Van Horn's testimony that Quisenberry in his discharge had given Van Horn a "chicken deal," and would be entirely inconsistent with Quisenberry's testimony, that Van Horn was so undependable that his employment could not be continued.

The discharge of Cox. Much of Cox's testimony I cannot and do not credit. As a witness he appeared to be an ardent advocate of his own cause, interested in the event, and vindictive toward Quisenberry. I am convinced that Cox's interest and animosity to Quisenberry led him to exaggerate certain features of his testimony, and to fabricate other portions which he thought would round out the whole of his testimony to his own advantage. I credit his testimony that when he applied for a job Quisenberry interrogated him about his union membership and that Cox lied to Quisenberry, concealing from the latter that he was a fully paid-up

member in the Union. I also credit his testimony that at the time of his discharge Quisenberry gave as the reason for his discharge the fact that Cox had driven in excess of the Company's speed limit. However, I do not credit that portion of Cox's testimony in which he stated that Quisenberry said that he had received a letter from the Union and thrown it in the wastebasket; or said that seeing that Cox was undecided how he would vote, he should get a union job: or that Quisenberry said that he knew he couldn't fire a man for joining a union, but that he would find a reason for discharging Cox and make it stick. Nor can I credit, that after being discharged in the manner which Cox related, that on the following day Cox confronted Quisenberry with the question, "What the hell did you fire me for?" Nor do I credit that, at that time Cox charged Quisenberry with firing him for his membership in the Union, and that Quisenberry admitted the discriminatory nature of Cox's discharge. This testimony is highly implausible, and when considered in relation to the demeanor and bearing of the witness, must be rejected, as a fabrication born of Cox's interest and vindictiveness.

Despite the fact that I do not credit much of Cox's testimony, it is established by the credited testimony of both Cox and Quisenberry that Cox was ostensibly discharged for speeding, and the question still remains, was that the real reason for the discharge?

From all the evidence it is clear that, at the time of Cox's discharge in the early days of the truck-

ing operation, the Company's speed limit was more honored in the breach than in the observance by the drivers. At that time the closing hour for the refinery at El Paso imposed a hardship on the operations, inasmuch as the men were hard-pressed to reach the refinery before it closed for the day. Several of the drivers and Quisenberry stated that on several occasions Quisenberry told the drivers to get to the refinery on time, even if it entailed violating the Company's speed limit. In view of those circumstances, the speeding by Cox does not appear to be a matter of much gravity, although speeding would certainly not be a trivial offense. In the light of all the circumstances, I conclude that the speeding of Cox was not a very compelling reason for his discharge, for in all other respects he appears to have been an efficient and competent driver. In my judgment the testimony of Almada, which I credit, focuses much light on Quisenberry's real reason for discharging Cox. It is clear that Quisenberry had approached the hiring of men for the job in a most realistic manner. He realized that in Texas and Arizona, to obtain efficient truck drivers he would have to take some truck drivers who belonged to the Union. From the hiring procedures used by Quisenberry, it is apparent that he wished to hire men who were nonunion, or men who, if they had been union in the past, were not actively engaged in union activities at the time of hire. According to Almada, Quisenberry was angered by the knowledge that he had hired Cox, who was a member in good standing of the Union, and who had

lied to Quisenberry about his membership in the Union in the course of his interview before hire. According to Almada, Quisenberry stated that he feared trouble from Cox later on. Under the circumstances that seems to be a natural reaction for Quisenberry, who then realized that he had hired an active adherent of the Union who did not hesitate to lie to gain his own ends. In hiring other men, Quisenberry by his hiring procedure had made reasonably sure that the men would not engage in Union activities, at least for some time. Undoubtedly Quisenberry felt that Cox constituted a prospective threat to Quisenberry's determination to keep the job non-union.

I deem it also significant that Quisenberry admitted that in the interview with Cox, at which Cox was discharged, Quisenberry asked the employee if he was still keeping up his union book.⁶

Perhaps it is true that the point which particularly angered Quisenberry was that Cox had lied to him about his union affiliation, but as I view that incident, Quisenberry had no right to interrogate Cox about his union affiliation, and if Cox gave Quisenberry a lie in answer to his illegal interrogation, that did not give Quisenberry the right to discharge Cox.

In his brief, counsel for the Respondent makes much of the fact that Cox lied to Quisenberry about his union membership at the time he was hired. Under the circumstances of Quisenberry's interrogation and Cox's answer, I do not consider Cox's

⁶ Tr. page 247.

untruthfulness such an ethical offense as would destroy his credibility as a witness. I view Cox's untruthfulness as a witness as a much more serious offense. However, on the preponderance of the credible evidence I am constrained to find that Cox was discharged because he was a paid-up member of the Union, and not because he had violated the Company speed limit.

The discharge of Johnson. As to the facts of this discharge I accept Quisenberry's testimony and reject that of Johnson. From the testimony of both men, it is certain that on the day of Johnson's termination, no specific words of discharge were addressed to Johnson by Quisenberry. When the fact became apparent in the course of his testimony, Johnson then stated that he had been told by Quisenberry many times that he would have to either drop his union book, or else. Prior to that point in his testimony, Johnson had testified several times that, from the day on which he was hired until the day of his termination, Quisenberry had not talked to him about the Union or his membership therein. I am satisfied that Johnson's first version, that Quisenberry and he had not discussed the Union or his membership, is the truth of the matter, and that his assertion that on many occasions he was told that he would have to drop his union book to work for the Company, is a fabrication born of Johnson's self-interest and partisanship. Nor do I credit the testimony of either Cox or Johnson that on an occasion after both had been fired, Quisenberry voluntarily told the men at the Truck Stop that in the

event the job went union, he would like to have both men back. Viewed in the light of all the evidence, taking into consideration Cox's demeanor as a witness, and Johnson's contradictory statements, I find that testimony to be unacceptable.

On the evidence as a whole, I find that Johnson voluntarily walked off the job, quitting his employment on May 15, 1953. On cross-examination Johnson reluctantly admitted that he was late for his scheduled run and that another driver had been dispatched on his run. Evidently he believed that when someone else was dispatched on his truck because of his tardiness that he was discharged by that act. Even if that portion of his testimony which I have rejected, were accepted, *arguendo*, that on many occasions he had been told that he would have to give up his book, or else, that course of conduct by the employer, would not give Johnson the right to anticipate his discriminatory discharge, walk off the job, and file a charge with the Board, which would seek his reinstatement, and pay for time he had not worked. I can discern no facts in this record upon which the theory of constructive discharge could be properly predicated.

The discharge of Richins. This employee, on the whole, testified in a creditable manner. Richins and Quisenberry both testified that Richins was ostensibly discharged because of transmission failure experienced in his truck.

Richins stated that he had experienced transmission failure only once, and that after the truck was repaired, he had no further trouble with it until

he was discharged. Quisenberry testified very clearly on this point. He said, that "when the truck was brought down" to Tucson, it had a rattling fifth gear, so the Company put the truck in the shop to have a new fifth gear installed. While the transmission was out of the truck in the shop, Quisenberry saw the gears of the transmission and except for the fifth gear they were in good shape. However, shortly after the truck was returned to service with Richins, the fifth gear dropped out at Lordsburg, and it was necessary to return the truck to the shop. When the transmission came out on this occasion, Quisenberry saw it again, and noticed that all teeth in gears Nos. 1-5 were rounded off. A brand new transmission was installed in the truck, and it was given back to Richins. A short time thereafter the truck again displayed a rattling fifth gear. At that point, according to Quisenberry, he decided that of the three drivers working on this truck, Richins was the least experienced, and that it was Richins who was damaging the transmission, so he fired Richins. After Richins was fired he had the truck taken to Phoenix, and upon examination of the transmission he found all gears Nos. 1-5 in the same condition as before, the corners rounded off.

Quisenberry's testimony, at first glance, appears to establish his contention that Richins was discharged for cause. But there are other facts in this record that rise to challenge his testimony. One of these facts, undisputed in the record, is that the truck in question, Truck No. 11, had a higher-gear

ratio than two other trucks of the same make used by the Company, and that shortly after Richins' discharge a set of gears of lower ratio was installed in this truck, because it was found that the higher gear ratio was unsuitable to the heavy duty performed by the trucks. On cross-examination Quisenberry admitted that the larger gears were found necessary and installed. Thus it appears very questionable that Richins' lack of experience had anything to do with the transmission failure or failures in Truck No. 11. A second fact of importance is that Richins was discharged before Quisenberry inspected the gears for the second time and not afterward. Thus, Quisenberry's knowledge of the condition of the gears on the occasion of the second overhaul, could not possibly have played any part in his decision to discharge Richins. So, the undisputed facts as to the transmission failure at the time of Richins' discharge, are these: (1) At the time Truck No. 11 was brought to Tucson, and put in service, it had a rattling fifth gear, with which the evidence does not connect Richins in any way. (2) Because of the rattling fifth gear, a new fifth gear was installed, and the other gears on examination were found to be in good condition. (3) After Truck No. 11 was returned to Richins, the fifth gear dropped off at Lordsburg, and the transmission was torn down again. This time, examination revealed, that in addition to the broken fifth gear all other gears were rounded off, so a whole new transmission was installed. (4) After the truck was returned to Richins and a few trips made, the fifth gear rattled

again. (5) Quisenberry, then decided that Richins' lack of experience was the cause of the mechanical failures, and discharged Richins. (6) On overhaul, all gears were found to be rounded off, as on the prior overhaul. (7) A short time thereafter, upon further trouble with the transmission, a whole new set of gears with a lower gear ratio was installed in the truck. This repair gave the truck the same gear ratio, as on other trucks of the same type and make which were functioning satisfactorily.

When these facts are fully appreciated, it then appears that Richins' driving, or lack of experience, had little or nothing to do with the transmission failures in Truck No. 11. The failures preceded his handling of the truck, and continued after his discharge, and it was finally determined that what the truck needed was a set of gears of a lower ratio which were more suited to the heavy duty which the truck was required to perform.

However, this leaves our examination in this position. Although it appears questionable that Richins was really to blame for the mechanical failures, did Quisenberry honestly believe him to be at fault and thus discharge him for cause, even if mistakenly?

From Quisenberry's testimony, and all other evidence in the case, I am satisfied that Quisenberry was an experienced and alert operator of the truck line, and that he appreciated the true condition of Truck No. 11, and the reason for its periodic transmission failures, at and before the time he fired Richins. An experienced diesel operator like Quisenberry must have appreciated the significance of

the different gear ratios in the trucks, when two trucks of the same type and make, with low gear ratios gave him satisfactory service on heavy duty work, and a third of the same make and type but with a higher gear ratio, continually broke down.

The fact that larger gears were installed shortly after Richins' discharge, is an established fact that throws considerable doubt on Quisenberry's claim that he believed the employee responsible for the damaged transmissions. Also, if Quisenberry believed that some driver caused the damage, how was the blame placed on Richins of the several drivers who drove Truck No. 11? Quisenberry's testimony is that he placed the blame on Richins because Richins was the least experienced of the drivers and because he had ridden with the other drivers and found them to be good drivers, and because he judged the other drivers to be better than Richins, with whom he had never ridden.

Opposed to Quisenberry's testimony and the facts as to the damaged transmission, there is other testimony. Both Almada and Richins testified that three days before Richins' discharge, Quisenberry asked Richins in Almada's presence how Richins would vote in the election, and that Richins had said he wouldn't cut off his nose to spite his face. Quisenberry admitted this interrogation of Richins. At that time, three days before his discharge, Quisenberry was much more interested in Richins' vote in the election, than he was in the young man's ability as a truck driver. Also, Almada testified credibly that after Richins was fired Quisenberry told him

that he hated to fire Richins, but that he had to, because Richins would vote against him in the election.

On all the evidence in the case, I find that it is not established that Richins' inexperienced, and inexperienced driving caused the damage to Truck No. 11. I also find, that Quisenberry seized the continuing trouble with the transmission as a pretext to discharge Richins, who he feared would "vote against him" in the election, and that he did not believe that Richins' inexperienced driving had caused damage to the truck.

The discharge of Almada. This employee was by far the most impressive of the General Counsel's witnesses. Almada appeared to be an intelligent and alert young man, and he testified in a forthright and convincing manner. Although he appeared displeased with much of Quisenberry's conduct about which he testified, he evinced no vindictiveness toward Quisenberry, and appeared to testify with fairness to all concerned in the proceeding. I credit Almada's testimony.

From all the testimony, including that of Almada and Quisenberry, it is clear that Quisenberry considered Almada to be the leading adherent of the Union among the men. From all the testimony it is likewise clear that Almada was respected by his fellow-employees and by Quisenberry. As a result of Almada's pre-eminence, he was particularly the target of much of Quisenberry's anti-union conduct. Almada's uncontradicted testimony establishes that Quisenberry feared that Almada would lead

the men into the Union, and for that reason he took stronger countermeasures with Almada than with any other man. This conduct of Quisenberry gives rise to the strongest kind of inference that Almada's discharge, in reality, arose from Quisenberry's fear that Almada constituted an obstacle to Quisenberry's efforts to keep the job nonunion.

However, counterbalancing this strong inference are two facts which I deem of preponderant weight. The first is, that though Quisenberry on several occasions displayed the utmost anxiety about Almada's position relative to any union activity, he apparently was satisfied by Almada's continual reassurance that in good faith the employee was keeping his promise not to influence the other men. The second fact, of greater weight, which is not disputed, is that Almada violated the Company rule as to bumping tires, burned up a tire on the road, and endangered \$30,000 worth of the Company's equipment. It is likewise undisputed that after Quisenberry saw how badly the tire was burned, and learned that it had been left in the desert, because it was too hot for the tire rack of the truck, that he phoned Almada and discharged him.

On all the evidence in the case, I find that this tire was burned and the equipment endangered because Almada had not bumped his tires as required by the Company rules. I find that the positive proof that the tire was burned, coupled with Quisenberry's testimony on this point which I credit, outweighs the inference arising from Quisen-

berry's anti-union conduct. I find therefore that Almada was discharged for cause.

The discharge of Bailey. Quisenberry testified credibly that he discharged Bailey because that employee was pulling the compression release on his truck, under the mistaken belief that it cleaned the motor, when in reality this practice was ruining the motor. Quisenberry explained that when considerable repairs were needed on Bailey' truck, and the repair shop told Quisenberry that pulling the compression release while rolling was the cause of the trouble, he initiated an investigation among the drivers and learned that Bailey claimed this practice cleaned the motor. To confirm his suspicions, on one night he followed Bailey, and heard the employee pull the compression release. Before Bailey's next run Quisenberry discharged the employee.

Joseph G. Grossheim, an employee-witness who testified in a very credible manner, told of an occasion when Bailey advocated the practice of pulling the compression release to clean out the motor in a conversation with him.

Bailey as a witness did not impress the undersigned favorably. He appeared highly interested in advancing his own cause, and at one point I deem his testimony untruthful. Bailey denied that he had ever pulled the compression release at improper times but these denials were not convincing. It appears from all the testimony as to Bailey, that he was not outstanding in any way among the drivers, and had not participated in any union activities while on the job.

To account for Quisenberry's discrimination against him, Bailey testified that on the night before his discharge, he was in the 84 Truck Stop with Quisenberry and some other drivers. On this occasion, he took out his wallet which had a union button pinned in it, and he also took from his wallet his union book which had a phone number he desired: that Quisenberry saw the button and the book and said to Bailey, "You still have your book?" And on the following day discharged him. On being questioned by the Trial Examiner, Bailey testified that from the time he was hired until that night, he and Quisenberry had never discussed the Union. I cannot, and do not accept the testimony of Bailey as to the incident at the 84 Truck Stop. The fortuitous combination of circumstances related by Bailey, places too heavy a strain on my credulity. Heretofore, I have noted, that I credit Bailey's testimony as to Quisenberry's procedure in hiring him.

On the evidence in the case as a whole, and particularly on the credited testimony of Quisenberry and Grossheim as related above, I find that Bailey was discharged for cause.

The layoff of Dayton. This employee testified in a creditable manner. I accept his testimony fully. Dayton testified that when he was laid off, Quisenberry in a telephone conversation, told him that he was laid off because of some tachograph charts and the "applications you have been passing around." When Dayton was notified by Quisenberry to return to work, Quisenberry gave as his reason for the

layoff that he had received "some bum information from a damned lawyer," and that the layoff was due to the "union deal." As noted heretofore, the Respondent offered no evidence on this layoff. On the testimony of Dayton, viewed in the light of all the evidence, it would appear that the layoff of Dayton was caused by some decision which was taken by the Company because of the union activity among the men, which decision was later reversed for some unknown reason. But neither the testimony of Dayton, nor the case as a whole, sheds further light on why the layoff occurred, or ended. What Quisenberry said in laying off Dayton, and what he said in returning him to work, raises a strong suspicion that the layoff was a reprisal by the Company against the men, or some other sort of discriminatory measure. However, strong suspicion is not sufficient to support the allegation that this layoff was discriminatory. On the evidence as a whole, including the credited testimony of Dayton, I find that the evidence is insufficient to establish that this layoff was discriminatory in nature.

I further find that the discharges of Van Horn, Cox, and Richins, as found above, constitute violations of Section 8 (a) (1) and (3) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent, set forth in Section III above, to the extent that they have been found to constitute unfair labor practices, occurring in connection with the operations of the Respondent

described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce, as defined in Section 2 (6) and (7) of the Act.

V. The remedy

Since it has been found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist from said unfair labor practices and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminated with respect to the hire and tenure of employment of Kenneth L. Van Horn, E. W. Richins, Jr., and John Cox by discharging them because of their union and concerted activities, it will be recommended that Respondent offer to the named employees immediate and full reinstatement to their former or substantially equivalent positions,⁷ without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the Respondent's discrimination against them, computed in accordance with the formula stated by the Board

⁷ The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, 65 NLRB 827. Reinstatement of Van Horn is recommended because though he was rehired, the record does not disclose whether or not he was restored to his former position, with all rights and privileges.

in *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the amount due.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Kenneth L. Van Horn, E. W. Richins, Jr., and John Cox, thereby discouraging membership in a labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondent did not discharge Harry M. Almada, William J. Johnson, or Sidney W. Bailey

for discriminatory reasons as alleged in the complaint.

6. The evidence is insufficient to establish that the layoff of Robert G. Dayton was discriminatory in nature as alleged in the complaint.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that Texas Independent Oil Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which

the undersigned finds will effectuate the policies of the Act:

(a) Offer to Kenneth L. Van Horn, E. W. Richins, Jr., and John Cox immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the Respondent's discrimination against them in the manner set forth in the section above entitled "The remedy."

(b) Upon request, make available to the Board or its agents, for examination and copying, all payroll records and reports, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of reinstatement under this recommended order.

(c) Post at its office at Phoenix, Arizona, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Six-

teenth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.

It is also recommended that the several allegations of the complaint stating that Harry M. Almada, William J. Johnson and Sidney W. Bailey were discriminatorily discharged, and stating that Robert G. Dayton was discriminatorily laid off, be dismissed.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report and Recommended Order, the Respondent notify the said Regional Director, in writing, that it will comply with the above recommendations, the National Labor Relations Board issue an order requiring it to take such action.

Dated this 27th day of January, 1954.

/s/ DAVID F. DOYLE,
Trial Examiner

APPENDIX

Notice to All Employees Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen and Helpers of America, Local Union No. 310, AFL, or any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will offer to Kenneth L. Van Horn, E. W. Richins, Jr., and John Cox immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of discrimination against them.

All of our employees are free to become or remain members of the above-named union or any

other labor organization. We will not discriminate against any employee because of membership in or activity on behalf of any such labor organization.

TEXAS INDEPENDENT OIL
COMPANY, INC., (Employer)

By
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS TO EXAMINER'S REPORT
AND RECOMMENDATIONS

Now comes the Texas Independent Oil Company, Inc., by its attorneys, Langmade and Sullivan, pursuant to the Rules and Regulations, and hereby takes exception to the intermediate report and recommended order of the Trial Examiner, dated January 27, 1954, in the above entitled matter:

I.

The finding and recommendation, line 4 to 15 inclusive, page 27, that the "hire and tenure of Kenneth L. Van Horn, E. W. Richins, Jr., and John Cox" was terminated because "of their union and concerted activities", and the recommendation they be restored and made whole on any loss of earnings, because:

1. These men were discharged for cause.

2. They were discharged during their probationary period of employment.

3. There was no evidence of these men having engaged in union or concerted activities.

4. The mere self-serving statement by a discharged employee that he "assumed" he was discharged for union activities, and at the same time denying he so engaged, does not support a finding that the employee engaged in, or was discharged for engaging in union and concerted activities.

5. The evidence does not support the finding, and is against the weight of the evidence.

II.

Exception is taken to the "Concluding Findings", lines 10 to 55 inclusive, page 18, because:

1. It was seriously disputed and denied the Respondent, by the conduct of Quisenberry, violated Sec. 8 (a) (1).

2. Interrogation as to membership in a union, in itself, is not per se, a violation of the Act, especially when the evidence shows that the man was employed, and was not denied a position, when there was, in fact, a vacancy, because of his membership in a union.

3. The laws of Arizona prohibit denying a man a position because of his non-membership in a union.

4. The mere fact that Quisenberry requested, or expressed the desire to some of the men the first month of their operations, and before he had obtained a full crew, that he would appreciate their

withholding an organization meeting until they were under way or "got rolling", was not coercion, or intimidation, or threats.

5. The Examiner's statement line 47 to 50, page 18, that "The interference, restraint, or coercion imposed by the employer is intended to be effective for one day, one year or forever", is not applicable, because:

(a) There was no interference, restraint or coercion. The mere request of Quisenberry that they defer, did not prevent their meeting. There was no surveillance, as alleged, no proof, or evidence introduced. A request does not amount to coercion.

(b) Free speech entitles an employer to say to his employees he would appreciate not organizing until he secured a full crew. A request to defer was an acknowledgment of their right to organize, not a denial.

III.

An employee may be discharged for cause, and it is not a defense to such discharge that an employer at some time was charged with an unfair labor practice.

1. The National Labor Relations Act is not designed to supplant the Courts for the recovery of damages and to adjudicate private rights, and there is nothing in the act which restricts freedom of speech on the part of supervisory employees. (N.L.R.B. vs. Budd, (169 Fed. (2) 571).)

Respectfully submitted,

LANGMADE & SULLIVAN,

/s/ By STEPHEN W. LANGMADE

[Title of Board and Cause.]

GENERAL COUNSEL'S EXCEPTIONS TO INTERMEDIATE REPORT, I. R. (SF) 286

Comes now Allen P. Schoolfield, Jr., Counsel for General Counsel, and files with the National Labor Relations Board the following Exceptions to the Intermediate Report in the instant case issued by the Honorable David F. Doyle, Trial Examiner.

I.

Counsel for the General Counsel excepts to the findings and conclusions of the Examiner on the discharge of Harry M. Almada. The Examiner found "On all the evidence in the case, I find that this tire was burned and the equipment endangered because Almada had not bumped his tires as required by the Company rules. I find that the positive proof that the tire was burned, coupled with Quisenberry's testimony on this point which I credit, outweighs the inference arising from Quisenberry's anti-union conduct. I find, therefore, that Almada was discharged for cause." (IR page 25, lines 35-40.)

II.

The Examiner's conclusions that "The Respondent did not discharge Harry M. Almada, William J. Johnson or Sidney W. Bailey for discriminatory reasons as alleged in the complaint". (IR page 27, Conclusions of Law No. 5, lines 41-43.)

III.

The failure of the Trial Examiner to find and conclude upon the basis of the entire Record that Respondent discriminatorily discharged Harry M. Almada, William Johnson and Sidney W. Bailey for the reason that they were engaged in concerted activities as protected by Section 7 of the Act.

Wherefore, Counsel for General Counsel respectfully requests that the Board reverse the Honorable Trial Examiner herein on the points stated above, and that after due consideration of these Exceptions and the Brief filed in support hereof, the Board issue a Cease and Desist Order, together with appropriate relief, concerning the allegations of the General Counsel as set forth in the Complaint as amended, and referred to herein.

Dated at Fort Worth, Texas, this 17th day of February, 1954.

Respectfully submitted,

/s/ ALLEN P. SCHOOLFIELD, JR.,
Counsel for General Counsel

United States of America
Before the National Labor Relations Board

Case No. 33-CA-230

TEXAS INDEPENDENT OIL COMPANY,
INC., and INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA, LOCAL UNION No. 310, AFL.

DECISION AND ORDER

On January 27, 1954, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (3) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices, and recommended dismissal of those allegations of the complaint. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and

the entire record in the case,¹ and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the following modifications:

The Trial Examiner found that the Respondent discharged Almada for cause and not, as alleged in the complaint, for union activity. A careful review of the facts convinces us that there is merit in the General Counsel's exception.

As set forth in the Intermediate Report, Manager Quisenberry went to Almada's home on April 11, 1953, to interview him about a job as truck driver with the Respondent. Quisenberry asked him whether or not he belonged to the union. Almada replied that he was a paid up member in good standing. Quisenberry remarked that that "let Almada out," as Quisenberry was hiring only nonunion men. Almada said that he sure needed the job. Quisenberry then stated that he would hire Almada if Almada would drop his union book, withdraw from the Union, and promise not to instigate any union activity either on or off the job and do nothing to cause "trouble" between the Respondent and the Union. Almada replied that he would comply with these conditions.

Shortly thereafter Almada was hired and given a "test hop" by Quisenberry, during which Quisenberry again told Almada that he did not want the

¹ The Respondent's request for oral argument is hereby denied because, in our opinion, the record, the exceptions and the briefs adequately present the issues and the positions of the parties.

Union. Before long Quisenberry was using Almada's home in Lordsburg for his headquarters, and offered to promote Almada to a supervisory position. Almada declined because he wanted to remain in good standing with the other drivers.

On May 15, the Union filed a representation petition with the Board, and a copy was served on the Respondent. Quisenberry, apparently disturbed by this turn of events, phoned Almada to say that the Respondent's vice president, Horace Steele, was angered and had instructed Quisenberry to get rid of Almada because he was union "all the way through." Quisenberry added, and for emphasis repeated, that Almada would either have to send his withdrawal card back to Union Representative Bone and resign, "or else." About May 22, Quisenberry, in a conversation with Almada and another employee, Richins, cautioned them that he had discharged employee Cox upon learning that Cox was a paid up union member, and asked Almada how he was going to vote in the prospective election. Almada replied that although he would not instigate any union activity he was for the union and would vote accordingly. On May 28 or 29, Quisenberry, in a conversation with Almada and another employee, Beeson, again warned Almada by advising that he had discharged employee Richins because Richins was getting union ideas in his head and would vote against Quisenberry at the election. A few days later Quisenberry repeated this admonition to Almada.

On June 3, Almada, through no fault of his own,

was delayed for almost two hours in fueling his truck. Upon completing the fueling, he attempted to make up for the lost time, and, for about 80 miles did not "bump" his tires to determine whether they retained sufficient air pressure. Although it was agreed that the better practice was to bump tires every 60 or 70 miles, Almada's conduct conformed to a set of rules issued over Quisenberry's signature, stating in part: "Drivers will bump tires at least every 80 miles * * *" (emphasis added.) Unfortunately, he discovered that one of the dual tires had gone flat and was burned up from the resulting friction. Although there is testimony by Quisenberry which the Trial Examiner credited that a burned tire endangered the equipment, no actual damage other than to the tire resulted in this instance, for the truck was empty and contained no dangerous petroleum products of any kind. Nevertheless, upon learning of this misadventure,—apparently the only occasion on which Almada had burned a tire—Quisenberry discharged him.

After discharging Almada, Quisenberry put employee Wallsmith in his place. Wallsmith had burned tires on at least two previous occasions. However, unlike Almada, he was not a union member.

On these facts the Trial Examiner concluded that Quisenberry was not unlawfully motivated because he "apparently was satisfied" that Almada, although a known union leader, was not influencing the other employees in favor of the Union, and in any event Almada had in fact ruined a tire. However, the

Trial Examiner did not explain why Quisenberry would have made repeated coercive statements to Almada, enumerated above, if he were really satisfied as to Almada's union attitude. Nor did the Trial Examiner give weight to the fact that Quisenberry replaced Almada with a nonunion employee who had at least twice burned tires.

We are satisfied, as was the Trial Examiner, that Quisenberry considered Almada to be the leading union adherent among the employees; that Quisenberry had engaged in a course of unlawful conduct, including interrogation and threats about union activity, designed to thwart such activity on the part of the employees and to apprise them, not only at their initial interview but thereafter as well, that their employment would be adversely affected if they engaged in union activity; and that Quisenberry had in fact discharged three other employees for union activity. In this setting we are unable to agree with the Trial Examiner that Almada was discharged for cause. Almada had not violated the Respondent's rule about bumping tires. Moreover, the evidence shows that the burning of a tire is an occasional business hazard which did not deter the Respondent from replacing Almada with a non-union driver who had previously burned tires on at last two occasions. In view of the Respondent's other unlawful conduct, we accordingly find that the Respondent's manager, Quisenberry, discharged Almada for exercising his protected right to join and assist the Union, and that the burning of the tire was a mere pretext which the Respondent seized

upon in an attempt to conceal its unlawful motive.

Because of the Trial Examiner's finding with respect to Almada, we shall, in accordance with our usual practice, exclude the period from the date of the Intermediate Report to the date of the Order herein in computing the amount of back pay awarded to Almada.²

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondent, Texas Independent Oil Company, Inc., Phoenix, Arizona, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL, or any other labor organization of its employees, by discharging any of its employees or discriminating in any other manner in regard to their hire, tenure, terms or conditions of employment:

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL,

² Pacific Intermountain Express Company, 107 NLRB No. 158, footnote 26.

or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Kenneth L. Van Horn, E. W. Richins, Jr., John Cox, and Harry M. Almada immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of the Respondent's discrimination against them in the manner set forth hereinabove and in the Intermediate Report;

(b) Upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary for the determination of the amounts of back pay due under the terms of this Order;

(c) Post at its office at Phoenix, Arizona, copies

of the notice attached to the Intermediate Report as an Appendix.³ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being signed by the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

It Is Further Ordered that the allegations of the complaint that the Respondent discriminated against William J. Johnson, Sidney W. Bailey, and

³ The notice shall be modified, however, by replacing the words "The Recommendations of a Trial Examiner" with the words "A Decision and Order" and by adding after the words "E. W. Richins, Jr." the words "Harry M. Almada." In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be further substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Robert C. Dayton be and they hereby are dismissed.

Dated, Washington, D. C., April 30, 1954.

[Seal] GUY FARMER, Chairman
ABE MURDOCK, Member
IVAR H. PETERSON, Member
PHILIP RAY RODGERS, Member
ALBERT C. BEESON, Member
National Labor Relations Board

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

TEXAS INDEPENDENT OIL COMPANY,
INC., Respondent.

**CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD**

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "Texas Independent Oil Company, Inc., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,

Local Union No. 310, AFL," Case No. 33-CA-230 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating David F. Doyle Trial Examiner for the National Labor Relations Board, dated October 6, 1953.

2. Stenographic transcript of testimony taken before Trial Examiner Doyle on October 6 and 7, 1953, together with all exhibits introduced at the hearing.

3. Respondent's request for extension of time to file brief dated October 23, 1953.

4. Copy of Associate Chief Trial Examiner's telegram, dated October 26, 1953, to all parties granting extension of time to file briefs.

5. Copy of Trial Examiner's Intermediate Report and Recommended Order dated January 27, 1954 (annexed to Item 9 hereof); order transferring case to the Board dated January 27, 1954, together with affidavit of service and United States Post Office return receipts thereof.

6. Respondent's request for oral argument received by the Board on February 16, 1954. (Denied, see page 1, footnote 1 of Board's Decision and Order.)

7. Respondent's exceptions to Intermediate Re-

port and Recommended Order received February 16, 1914.

8. General Counsel's exceptions to Intermediate Report and Recommended Order received February 16, 1954.

9. Copy of Decision and Order issued by the National Labor Relations Board on April 30, 1954, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

10. Respondent's petition for rehearing and exhibits attached thereto, received October 4, 1954.

11. General Counsel's answer to Respondent's petition for rehearing, dated October 8, 1954.

12. Respondent's reply to General Counsel's answer to the petition for rehearing, dated October 18, 1954.

13. Copy of Board's Order denying Respondent's petition, dated November 2, 1954, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of March, 1955.

[Seal] /s/ FRANK M. KLEILER,
 Executive Secretary, National
 Labor Relations Board

[Endorsed]: No. 14680. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Texas Independent Oil Company, Inc., Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed: March 28, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 14680

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

TEXAS INDEPENDENT OIL COMPANY,
INC., Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this

Court for the enforcement of its order against Respondent, Texas Independent Oil Company, Inc., Phoenix, Arizona, and its officers, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "Texas Independent Oil Company, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 310, AFL," Case No. 33-CA-230.

In support of this petition the Board respectfully shows:

(1) Respondent is an Arizona corporation engaged in business in the State of Arizona, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on April 30, 1954, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Texas Independent Oil Company, Inc., Phoenix, Arizona, and its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered,

which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, and its officers, agents, successors and assigns, to comply therewith.

Dated at Washington, D. C., this 3rd day of March, 1955.

NATIONAL LABOR RELATIONS
BOARD,

/s/ By MARCEL MALLET-PREVOST,
Assistant General Counsel

[Endorsed]: Filed Mar. 4, 1955. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER

Comes now the Respondent, Texas Independent Oil Company, Inc., by its attorneys, Langmade & Sullivan, pursuant to rule 34 of this Honorable Court, and for answer in reply to the Petition for

Enforcement of an order of the National Labor Relations Board, admits, denies and alleges as follows:

I.

Answering paragraph numbered (1) of the Petition, admits the Respondent is an Arizona Corporation, and the jurisdiction of this Court, but denies the commission of an unfair labor practice within the judicial circuit or elsewhere.

II.

Answering paragraph numbered (2) of the Petition, admits the proceedings before the Board resulted in an order dated April 30, 1954 directed to the Respondent, as alleged, directing the reinstatement of four employees, together with back pay, and that the decision and order was served, and in this connection allege a Motion for Rehearing was filed setting forth grounds for the modification and the setting aside of said order in so far as it directed the reinstatement, and back pay of the following employees, and the amount set opposite their names, viz:

| | |
|---------------------|------------|
| Kenneth L. Van Horn | \$1,259.62 |
| John E. Cox | 238.90 |
| E. W. Richins, Jr. | 840.46 |
| Harry M. Almada | 1,141.46 |

III.

Answering paragraph numbered (3) of the Petition, this Respondent has not received or been served with the transcript alleged to be filed at the

time this answer is prepared, and in this connection states its desire to file a supporting brief upon receiving such transcript.

IV.

Further answering the Petition, your Respondent alleges there was cause shown for the discharge of each of the above named employees, and there was no finding of fact by either the Examiner or the Board that the cause for discharge was not established, or that it was not sufficient in itself to warrant the discharge in each case.

The reinstatement and back pay was ordered and directed upon evidence that a fellow employee, Quisenberry, in employing the men had inquired of their union affiliation, and discussed his philosophy with the men, stating that he had once belonged to a union and believed he was better off without a membership. Conversations between employees, the Board found to have constituted the unfair labor practice.

It is alleged that the officers of the Respondent had no knowledge of the conversations carried on between the employees, that the Board holds to be unfair, and that when it was called to the attention of the Respondent, its President immediately directed Quisenberry to stop discussing with other employees the merits of union affiliation; that thereupon, and before any complaint was filed, the conversations ceased upon direct orders of the Company.

There was no showing, or evidence that there was a policy of the Company to discriminate against

union men, and the Company had no knowledge, and did not consent or approve the interrogation by Quisenberry of the union affiliation, and no man was refused employment because of his union membership.

V.

Almada was discharged for failure and neglect to test the tires in accordance with the rules of the Company, resulting in a fire, endangering the property valued at over \$30,000.00 and the lives of others.

VI.

E. W. Richins, Jr. was discharged for destroying and wrecking transmission gears due entirely, in the opinion of the Company to his lack of experience in driving heavy equipment. Richins was dismissed within the 30 day probationary period of employment under which all drivers were employed.

VII.

John E. Cox was discharged for speeding, within the probationary period of employment, violating a rule of the Company and the speed laws of the State.

VIII.

Van Horn was discharged after 10 days of employment due to the reluctance of this employee to report for work, and expecting the Supervisor to get him out of bed each day. This employee, upon request for reinstatement, was reinstated before any charges were filed, and voluntarily left the employ

of the Company before the Order was issued to reinstate with back pay.

IX.

There was no finding the causes for discharge did not exist, or that they were not just causes for dismissal.

Wherefore, your Respondent submits that even though conversations between employees, without the consent, knowledge or approval of the Company, if in fact it constitute an unfair labor practice, does not constitute a waiver of the Company's right guaranteed by Section 10(c) of the National Labor Relations Act, providing that no order of the Board shall require the reinstatement or allow back pay for employees suspended or discharged for cause.

This Respondent prays upon the record being furnished, the Court review the evidence and testimony taken in connection therewith, and the petition for enforcement be denied.

Dated at Phoenix, Arizona, this day of March, 1955.

Respectfully submitted,

TEXAS INDEPENDENT OIL
COMPANY, INC.,
By LANGMADE & SULLIVAN,
/s/ S. W. LANGMADE,
Their Attorneys

[Endorsed]: Filed Mar. 18, 1955. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner National Labor Relations Board will rely upon the following points:

1. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

2. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent discriminatorily discharged employees Van Horn, Cox, Richins, and Almada in violation of Section 8 (a) (1) and (3) of the Act.

Dated at Washington, D. C., this 25th day of March, 1955.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board

[Endorsed]: Filed Mar. 28, 1955. Paul P. O'Brien,
Clerk.

Before the National Labor Relations Board
Sixteenth Region

Case No. 33-CA-230

In the Matter of Texas Independent Oil Company,
Inc., and International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers
of America, Local Union No. 310, AFL.

TRANSCRIPT OF PROCEEDINGS

Grand Jury Room 304, U.S. Postoffice and Court-
house Bldg., Tucson, Arizona, Tuesday, October 6,
1953.

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock a.m.

Before: David F. Doyle, Trial Examiner.

Appearances: Allen P. Schoolfield, 300 W. Vickery
St., Fort Worth, Texas, appearing on behalf of
General Counsel. Howard D. Grant, 267 S. Stone
Ave., Tucson, Arizona, appearing on behalf of the
International Brotherhood of Teamsters, Chauff-
eurs, Warehousemen and Helpers of America,
Local Union No. 310, AFL, the charging party.
S. W. Langmade, 303 Phoenix Natl. Bank Bldg.,
Phoenix, Arizona, appearing on behalf of Texas
Independent Oil Co., Inc., the respondent. [1*]

* * * * *

* Page numbers appearing at top of page of original Reporter's
Transcript of Record.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A through 1-L, for identification, were received in evidence.)

* * * * * [8]

Mr. Schoolfield: Now, counsel for the General Counsel at this time solicits a stipulation from the respondent to the effect that the Texas Independent Company, respondent herein, is engaged in commerce under the Act.

Mr. Langmade: The respondent will so stipulate.

Trial Examiner Doyle: It is so stipulated.

Mr. Schoolfield: Now, if the Examiner please, the counsel for the General Counsel wishes to move to amend the complaint at this time, Paragraph 5, to include under the name of Harry Almada, the name of Kenneth Van Horn; the date, May 12, 1953. [9]

I should also move to include Sidney Bailey, S-i-d-n-e-y B-a-i-l-e-y, July 6, 1953.

I should also move to include the name of Lloyd Hinds, L-l-o-y-d H-i-n-d-s, date, October 1, 1953.

To further amend paragraph 5, I wish to insert that respondent laid off or discharged Chester Robinson, C-h-e-s-t-e-r R-o-b-i-n-s-o-n, on or about September 4, 1953, for six full days, reinstating said Robinson on September 10, 1953.

I should also like to include the following:

Respondent laid off Robert Dayton, R-o-b-e-r-t D-a-y-t-o-n, on or about September 8, 1953, for two full days, reinstating said Dayton on September 10, 1953.

I should also like to include the following:

Respondent also laid off Merrill Nutter, M-e-r-r-i-l-l N-u-t-t-e-r, Alfred Jenson, A-l-f-r-e-d J-e-n-s-o-n, Howard Saner, H-o-w-a-r-d S-a-n-e-r, Wesley Parker, W-e-s-l-e-y P-a-r-k-e-r, and A. E. Buchanan, B-u-c-h-a-n-n-o-n, on or about September 9, 1953, for one full day, reinstating these men on September 10, 1953.

General Counsel at this time further moves to amend for clerical errors, paragraph 8 g which reads at this time, "On or about March 2." I wish to strike "March" and amend it to "May 2", as it will now read, "On or about May 2, 1953."

I further move to amend paragraph 8 i for a date. It reads at this time, "April 14, 1953." I wish that to be amended to read, "April 12, 1953." These last two amendments, if the [10] Examiner please, were typographical errors.

Trial Examiner Doyle: Mr. Langmade, I will hear you at this time.

Mr. Langmade: If the Examiner please, we have no objection to the amending of g and i on typographical errors.

Trial Examiner Doyle: All right. The complaint is amended in those two particulars as to the dates.

Mr. Langmade: We do, however, seriously object to the amending of paragraph 5 to include additional names as set forth by counsel, for the reason that respondent is not prepared to answer these charges. This complaint is a formal complaint and a formal answer is required, and respondent prepared its case with that in mind and not on the theory of coming into court and adding what you

might call an additional parties plaintiff to this complaint.

I would like to point out in particular "Kenneth Van Horn, May 12," which is earlier than any other charge in paragraph 5, and certainly the National Labor Relations Board could have or should have had knowledge of that charge rather than, let me say, going around and trying to find additional people to put in paragraph 5 after the case had been set for formal hearing.

I further object to the inclusion of the gentlemen that counsel says were laid off and then reinstated. As I understand it, one of the charges here is that these men were discharged because they belonged to a labor organization. It seems to me [11] the charges are certainly being refuted by the fact that the men were laid off and then put back to work. The charge is that they were fired because of their activities in the labor organizations.

Trial Examiner Doyle: Mr. Langmade, I think there is a good deal of merit to some of your objections, and I do think the respondent is entitled to know what the charges are before he comes to the hearing; however, we are in this position, that we can't adjudicate the matter, some of these discharges at this time, and let others go. What we would like to do, the Board, and it is the policy of the Board to try to adjust these matters and adjudicate these matters once and for all when we do have a hearing. So I am going to permit the amendments as moved by the General Counsel, and the complaint is amended in accordance with my

predecision in order, and I will also state to you, Mr. Langmade, that on our off-the-record discussion of a few moments ago, counsel seemed to think we might finish this case by tomorrow. I am going to say that I will give you some additional time, if you request it, when we get near the end of the case, if you find it will give you a chance to put in a defense to these matters which you regard as new, I will give you some additional time on Thursday or Friday morning, if that would be of any assistance to you.

Mr. Langmade: That being the Examiner's ruling, we will do our best to comply. [12]

* * * * *

Mr. Langmade: There is one fundamental question I would like to ask the Examiner before we proceed in this case, and that is assuming that these gentlemen and the Examiner find that these men were interrogated as to union affiliations or non-union affiliation, then does it follow that a man cannot be discharged for cause, or in the event that the respondent does show that there was cause for the firing of this man, and the Examiner also finds the same thing, then would the finding then be merely that the respondent was wrong in interrogating these employees as to whether they were union members or not? [13]

* * * * *

HARRY M. ALMADA

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you give us your full name and address.

The Witness: My name is Harry M. Almada. I now live at [15] Wickenburg, Arizona, and for an address, I do not really know, since we just moved into this house, other than I believe the street is Jefferson.

Trial Examiner Doyle: Well, will Wickenburg, Arizona, get you?

The Witness: General Delivery.

Trial Examiner Doyle: All right, General Counsel.

Q. (By Mr. Schoolfield): Mr. Almada, where were you employed prior to June 3, 1953?

A. I was employed by Texas Independent.

Q. Texas Independent Oil Company?

A. Oil Company.

Q. What were your duties with that company?

A. To drive from Lordsburg to El Paso and back to Lordsburg.

Q. To drive over-the-road rigs, is that what you drove, big trucks?

A. Trucks and trailers.

Q. Diesel trucks? A. Yes.

Q. What was your principal product that you hauled? A. Gasoline.

(Testimony of Harry M. Almada.)

Q. Gasoline——

Trial Examiner Doyle: These were tank trailers, were they not?

The Witness: Tank trailers, tank trucks and tank trailers. [16]

Q. (By Mr. Schoolfield): Did you often haul an extra trailer with your regular trailer?

A. No, just the two units coupled up, the truck and the trailer.

Q. I see. Now, Mr. Almada, would you tell the Examiner when you first spoke and the first conversation you had with a representative of the Texas Independent Oil Company, and when you first went to work, if you recall.

A. My first meeting with an agent of the Texas Independent was on April 11, and that was on a Saturday I believe, around noon or shortly after.

Q. Of this year, 1953? A. 1953.

Q. Would you go ahead and tell the Examiner who this man was that contacted you and what he said to you.

A. It was Mr. Quisenberry, and he was brought to my house by a fellow by the name of Bill Williams who drives for McNutt Oil Company, also out of Lordsburg to El Paso, or not quite into El Paso but to the outskirts of it and back to Lordsburg.

Bill Williams, knowing that I was out of a job, was interested in me getting work. Mr. Quisenberry was looking for drivers. They hadn't started working through there yet but they were planning the

(Testimony of Harry M. Almada.)

operation. And he came to my house with Mr. Bill Williams, of course, and asked me if it was true that I was looking for a job, which I said yes. Then he said that he was starting [17] out a new operation from Lordsburg back to El Paso and back hauling fuel and would I be interested in a job, and I said I sure would. He questioned me as to whether I belonged to the union or not. I said that I had a union book fully paid and in good standing and that I was in the union. He said, "Well, that lets you out, because I am not hiring any union men. I am hiring all non-union men because I don't want a union outfit." He said, "I don't want no trouble with the union and I don't want to be hampered or delayed in any way by the union." I said I was sure sorry but I would tell the truth because I didn't want to start and go a month or so—if I went to work with Texas Independent, I wanted a long-term job and not one that would strand me right away."

"Well," he said, "the old man would not put up with it." Right after that I found out who that was. Anyway, he said the old man would not put up with it. He said he would only let me—tell me later on that I would have to go. He said, "There is no use in putting you on," and I said that I was sure sorry because I needed the job.

Then he suggested I drop my union book and withdraw and I could work like that. And I said I would do that if it would get me the job. He said if I would promise not to instigate any union ac-

(Testimony of Harry M. Almada.)

tivities on the job and off the job and solemnly promise to stay out of any kind of trouble like that, anything that would create trouble between the union and Texas Independent, [18] that I could have a job as long as I wanted it. And I said I would swear not to ever instigate union activities as long as I could have the job, and I said I would keep my word about it. And he said, "Fine, you have a job as long as you want it." And he said, "You will probably start right about Wednesday." And he left shortly after that and Bill Williams and another driver came in when we started this conversation, George Basilvaso, I believe the fellow's name was—I believe it is spelled B-a-s-i-l-v-a-s-o.

Q. Is that George Basilvaso? A. Basilvaso.

Q. All right.

A. Anyhow, they heard this conversation and they left shortly after Mr. Quisenberry, and we talked a little after Quisenberry left.

Q. You and these other fellows talked?

A. Yes.

Q. Well, we wouldn't be interested in that unless the Examiner wants to hear it.

Trial Examiner Doyle: No, I think it would be improper.

Q. (By Mr. Schoolfield): Now, Harry, when did you next hear from Mr. Quisenberry; would you tell the Examiner when?

A. It was on Monday at about 7:30 or 8:00 o'clock in the morning. He called me, and I think

(Testimony of Harry M. Almada.)

it was on April 13. He called me and told me, "Harry, I have got a truck waiting for [19] you here." And I wasn't waiting for anything on Monday because he had said before that it would be on Wednesday, which I told him I would get ready and get breakfast and come right on down and take it out. Well, when I got out to the Dixie Truck Stop, he was there with his truck. It was a Sterling diesel and the number of the truck, I believe, was No. 9. And he was waiting for me there and he said he would test hop me. He said he would drive with me from Lordsburg to El Paso and then get a plane and fly back to Phoenix, which he did. We got the truck checked and started. And as far as going with me to El Paso, he then changed his mind and came back to Lordsburg with me.

Q. How far did he test hop you then, Harry?

A. From Lordsburg to El Paso and back to Lordsburg.

Q. Now, on that trip, did you and Mr. Quisenberry talk about the union?

A. Yes, he told me about his views about why he didn't want the union in on the deal there. He told me that at one time he had belonged to the union and he said that he was of a progressive nature and that the union had held him back at one time or the other and he finally started working without the benefit of the union and since then he had gone up. He said, "We can run this as a good deal here without any need of the union." He talked about other things, but some of them prob-

(Testimony of Harry M. Almada.)

ably wouldn't have any bearing on the case at all, about freighting——

Q. You talked about your jobs, too? A. Yes.

Q. All right. Now, Harry, you testified you started to work for Texas Independent around April 13 of 1953 and that you made over-the-road runs usually from Lordsburg to El Paso and in that general vicinity: is that correct?

A. That is correct.

Q. Now, when you made these runs, would you tell the Examiner what instructions you had on the speeding or the speed limit or the speed you were supposed to go over the roads.

A. Well, we talked quite a bit about that, too. Some of it I requested that we talk about and some of it I questioned.

Q. Who is "we"?

A. Quisenberry and I.

Trial Examiner Doyle: When did this conversation take place?

The Witness: It was in the truck while we were moving on the way to El Paso and back.

Trial Examiner Doyle: When you were being tested?

The Witness: That is right.

The question was "speed", what speed would be permissible by Texas Independent. And he told me, "Well, if you don't overdo it, 50 to 55 unless requested to do otherwise," and he said nobody sees these charts but him. The chart is the thing that records all the happenings on a trip inside of the clock.

(Testimony of Harry M. Almada.)

He said that nobody sees these charts but him so there was nothing to worry about on that score. However, he said, "I don't want you fellows to absolutely take over and violate all kinds of laws, but there might be some times when——"

Q. (By Mr. Schoolfield): Harry, did Mr. Quisenberry ever instruct you to pull the chart and speed the truck to make a run?

A. Yes, on several occasions right there at Lordsburg, right there he would come in either with a truck or just a little ahead of the truck, and most of those trucks at that time were running late. The refinery closed at 8:00 o'clock at night. They closed the gates at that time.

Q. What refinery is this, Harry?

A. The Standard Oil Refinery in El Paso. That was the deadline. We had to get in before that time. We also had to "goat" the trailer at the state line of New Mexico just before you go into Texas and then "goat" this trailer to within the city limits of El Paso, Texas, which when we get it in the city limits of El Paso, we would hook it up. So all of that was just work that took time away from our driving time, see, and all of these trucks were coming in rather late, around 4:00 o'clock and maybe a little after. Some of them were as late as 4:15 and 4:20. But even 4:15 was rather late to make a standard schedule from Lordsburg to El Paso and get there in time to load before they closed the gates. So we would be told—at first he started by telling us to just go ahead and throw the chart

(Testimony of Harry M. Almada.)

away. He said, [22] "Get this truck loaded regardless." Well, we knew what he meant so we would throw the chart away and take off and disregard state laws, city laws and everything else, and the main thing was to get that truck——

Mr. Langmade: Just a minute, I object to that unless he states what state laws and city laws were being violated.

The Witness: From speed.

Trial Examiner Doyle: Just a minute, I don't know whether that is a conclusion of the witness or not. The way he testified is a little confusing. Let us find out what was said in regard to state laws.

Q. (By Mr. Schoolfield): Harry, I will ask you this question: Were you ever told personally by Mr. Quisenberry to ignore your chart?

A. Yes, he did.

Q. And would you tell the Examiner approximately when that was said to you and how often, if you can recall?

A. Well, at the beginning there just about every trip, because they were all coming in late.

Q. I see.

A. And it started out, like I said at the first, to ignore the chart, to tear it out and throw it away. Later it came to ignore the chart but not throw it away.

Q. Leave the chart in the truck, turn the chart in but to ignore it as far as speed? [23]

A. That is right.

(Testimony of Harry M. Almada.)

Q. In other words, to get that truck down and get it loaded and get it back and get it to that gate at the refinery in El Paso before it closed?

A. Before it closed.

Trial Examiner Doyle: Now, the record isn't very clear on that. I don't think the record is very clear on that. Now, this chart you are referring to is a tachometer chart that shows the speed at which the truck is being driven; is that right?

The Witness: That is right.

Mr. Schoolfield: Is the Examiner clear on the "goat" proposition in El Paso?

Trial Examiner Doyle: No.

Mr. Schoolfield: Would the Examiner like me to explain it?

Trial Examiner Doyle: I think we had better.

Mr. Schoolfield: The "goat deal" at El Paso is a little shift truck that hauls the trailer across the City of El Paso to the refinery. The boys in the truck—now, I stand corrected—drive these trailers to the city limits of El Paso. There they must drop their trailer and have the thing goated across to be in conformance with the El Paso city laws, is my understanding.

Trial Examiner Doyle: What is the goat part of the deal?

Mr. Langmade: If I may explain it this way, Texas is, for reasons which are more or less commonly known—has more or less restricted the length of trucks. New Mexico, Arizona and [24] California more or less have a standard length limit

(Testimony of Harry M. Almada.)

of trucks and trailer, which is around 65 feet. Texas has a law that no truck and trailer can exceed 45 feet in length. Therefore, when the truck goes over the New Mexico line into Texas, the trailer has to be taken off. The trailer with the main tank comes in by itself. A stub diesel, as they call the goat, then hooks on to the trailer and brings it to the El Paso city limits. Now El Paso city limits does not object to trailers, trucks and trailers of 65 feet in length. Therefore, the minute you get into the city limits, the truck and trailer is then hooked up and taken to the refinery and back to the end of the city limits, and that is a distance of about three or four miles that all this commotion goes on in.

Mr. Schoolfield: It is a time-consuming operation, I take it.

Trial Examiner Doyle: That is substantially a correct statement of what this goat thing is?

Mr. Schoolfield: Yes, sir.

Trial Examiner Doyle: It is not only myself who has to understand it, some day somebody in Washington will read about this and I wouldn't want them to be puzzled about it.

All right, gentlemen, proceed.

Q. (By Mr. Schoolfield): Now, Harry, while you were working for the Texas Independent, did you have any additional duties or did Mr. Quisenberry use your house for an office, or anything of [25] that nature, would you tell the Examiner that?

A. He began to use my house as an office there

(Testimony of Harry M. Almada.)

in Lordsburg and he done all his long-distance calling from there to this office in Tucson, or for receiving orders from his office in Tucson or calling El Paso if he needed to, and just a general place to go and carry on business. I rather thought he just used it like an office.

Q. Did he ever call you to relate messages to the other drivers?

A. Yes, sir, he called me several times and asked me to relay messages to the other drivers.

Q. Did you have any additional authority or any other authority above that?

A. No, no authority other than from the very beginning he started by asking me to kind of look out for things on that end. And later on it turned out that he wanted me to be the overseer on that end. He wanted one other fellow that started just ahead of me to oversee on the west end and me on the east end, which job I didn't like.

Q. What did you tell him when he asked you to do this?

A. I just wanted to drive.

Q. You refused to act as an overseer?

A. At first, yes, I didn't want any part of that because it would get me in bad standing with the other drivers.

Q. Did you ever hire or fire? [26]

A. No. I just recommended, because there was one or two fellows that I liked and wanted to help and——

Q. In other words, you brought some drivers to him once in awhile and he hired them?

(Testimony of Harry M. Almada.)

A. Yes.

Q. Do you know of your own knowledge whether all the rest of the boys did the same thing?

A. Oh, yes, some of the other fellows right there in Lordsburg driving to El Paso did so, too.

Q. Now, Harry, would you tell the Examiner if you have ever had a discussion with Mr. Quisenberry concerning E. W. Richins, Jr., and when this conversation took place.

A. Well, Richins went on the job and we have never had any conversations of any kind about Richins until Richins was fired.

Q. Now, Richins was fired on May 25, 1953. Now, can you tell the Examiner when you had a discussion with Mr. Quisenberry on Mr. Richins?

A. Well, it was right after that and it was kind of a blow to me because I had heard nothing about him being in trouble.

Q. Now, right after that, what do you mean by that?

A. We met at Dixie, at the Dixie Truck Stop.

Q. How long after that?

A. I would say it was just about three days, maybe four days after that. It wasn't too long after he was fired.

Q. Yes. [27]

A. It wasn't too long after he was fired that I heard that Quisenberry was in town, and I went on down to the truck stop and he was there. So we sat at this counter and he talked to me. There was one other there present at the time.

(Testimony of Harry M. Almada.)

Q. Who was that?

A. Herschel Bevins or Beson.

Trial Examiner Doyle: Will you spell that?

Mr. Schoolfield: Beson, B-e-s-o-n.

Mr. Langmade: It is B-e-e-s-o-n.

Q. (By Mr. Schoolfield): Now, what did Mr. Quisenberry say to you about Mr. Richins at that time?

A. He said that Bill Richins was a good fellow and he hated to let him go but he was too thick with his cousin Art Richins and that he was poking union ideas into his head and that Bill Richins would vote completely against him, so he had to let him go.

Q. What did he say about voting, would you repeat that?

A. He said that Bill Richins would vote in favor of the union, meaning against him, he would vote in favor of the union and that he had to let him go.

Q. Now, Harry, did you have any other conversation on the subject of Mr. Richins?

A. Well, at the latter stage, he came to my house to use the phone.

Q. How much of a later date? [28]

A. Well, days after that.

Q. How many?

A. Maybe two or three days after that he was at the house again.

Q. I see, after you talked to him at the truck stop.

A. At the truck stop.

Q. What did he say then?

(Testimony of Harry M. Almada.)

A. He repeated the same things almost word for word. He said he sure hated to let Bill Richins go because he was a good man but that Bill Richins was too thick with Art Richins and they were seen frequently in all these truck stops, in all these truck stop cafes downtown together and he figured that Art Richins was poking union ideas in his head and would cause him trouble later on by voting for the union.

Q. All right. Harry, did you ever have a conversation with Mr. Quisenberry on the subject of Johnny Cox? A. Yes.

Q. Tell the Examiner when and where you were and who was present, please.

A. Oh, I would say just a few days before he let Bill Richins go he was evidently worried, getting worried about everybody, and it was right in front of my house just after we got out of our cars, and he asked us to——

Q. Who is "us"?

A. Bill Richins and me. [29]

Q. You and Bill Richins were together?

A. Were together, and Mr. Quisenberry told us why he let Johnny Cox go. He said when Johnny Cox applied for a job he asked him if he was in the union, "I said, 'Have you ever carried a book or got a book now,' and he said, 'No.'" So he gave him a job on the strength of that. And a few days after that, Johnny Cox borrowed \$20.00 from Mr. Quisenberry, which Mr. Quisenberry loaned Johnny Cox the \$20.00. And he said later after that when

(Testimony of Harry M. Almada.)

he found out that he carried a book all the time and was in good standing with the union that it made him so mad that he had a fellow that was in the union, and he let him go. And he said, "I fired him because he could cause me trouble later on."

Q. Now, would you tell the Examiner whether or not you had a conversation with Mr. Quisenberry concerning yourself and your union activities around the middle of May 1953.

A. He called me.

Q. Will you tell the Examiner where you were.

A. I was at home, and I would say it was between 7:00 and 8:00 o'clock at night in the evening, and he called me and said that he was on a spot, that the old man, meaning, I guess, Horace Steele, in Phoenix, was mad at him and told him to get rid of a certain man because he was union all the way through. He said he asked him who was that and he was told that it was Harry Almada in Lordsburg. He said, "I don't want him on; I want him [30] fired." Quisenberry said, "I am in a terrible spot——"

Mr. Langmade: Just a minute, was this conversation in front of Quisenberry or is it something that the men told you?

The Witness: He told me.

Mr. Langmade: You are relating questions or statements that Quisenberry made to you?

The Witness: Yes.

Q. (By Mr. Schoolfield): It was a telephone conversation?

(Testimony of Harry M. Almada.)

A. Yes, and he said the only thing that he could do, he said, "You take your withdrawal card and send it back to Fred Bone and tell him we want no part of the union." I said that I couldn't do it. He said, "Well, by George, there is nothing else you can do. It is either that or else." I said, "Look, I have kept my word with you throughout this thing and I haven't created any union activity of this kind and you are firing me now." He said, "Fred Bone told me that you were a staunch union supporter and that you was ready, the minute he gave the word to go, you were ready." In other words, that I would follow whatever the union told me to do. I asked him to give me a little time to call Mr. Fred Bone in El Paso, because Fred Bone gave me the word of honor—gave me his word of honor that he would never interfere with me in any way whatsoever because he knew I needed my job awfully bad. So I called Mr. Bone in El Paso and I questioned him about that, and Mr. Bone told me he had never seen Mr. Quisenberry, he didn't know him from Adam, [31] had never talked with him over the phone or otherwise, so then I called Quisenberry back again and I told him about my talk with Bone, and he said, "Well, I am sorry, but I have to do something to tie my men in on one side of the fence or the other," and I said, "Well, I can't turn loose of my withdrawal card. I will need that one of these days and I will be sorry if I don't have it." He said, "Either that or else." And I told him, "Well, you do whatever you

(Testimony of Harry M. Almada.)

think is right." So then Mr. Quisenberry said, "I am going to Phoenix tomorrow and I will talk with the old man, and then I will be back and call you and let you know one way or the other." He said, "Meanwhile I will sustain your schedule for tonight. You are not to work tonight." I told him that it was all right, and I went downtown waiting for the fellows to come in.

Q. That is after the conversation, you left the house?

A. After the conversation, yes. In other words, he hung the phone up. I was pretty well disgusted and I went downtown. And I decided I would talk with the drivers and see if they could tell me anything.

Q. You made your run that night, anyway, didn't you?

A. Yes, well, my breaking partner brought my truck in anyhow, which decided me, because I wasn't expecting to run that night. And I asked him, rather I told him I was not supposed to run and he said, "It is all right, I have everything fixed up."

Q. Well, you went on working. This was around the middle of [32] May, was it not?

A. Just about the middle of May.

Q. And then you continued working on until the day you were discharged; is that correct?

A. Yes, sir.

Q. Now, let's see. Now, did you ever have a conversation with Mr. Quisenberry in the presence of

(Testimony of Harry M. Almada.)

another in which Mr. Quisenberry asked you anything about voting? Would you tell the Examiner about that.

A. Yes, there was one night right in front of our house when Bill Richins and I were together and he talked to both of us. He first asked Bill Richins, "This is none of my business, really, and I shouldn't ask, but I would like to know just how you are going to vote. Would you vote against me?" Bill Richins thought right quick and answered, "I will not bite my nose to spite my face." Then Mr. Quisenberry turned and asked me the same question, and I told him what I told you from the very beginning still goes, meaning that in our talks I had told him I was union and that I would not instigate union activities but whenever the votes were cast and the majority were ready to go union, I would go with them because I already was union, and that was what I meant by that.

Q. Now, Harry, can you place the day of the month and the month that this conversation took place a little better for us, please? [33]

A. It is so long ago now that I can't think of all those dates exactly.

Q. Not necessarily the exact date, Harry.

A. It was in May sometime before Bill Richins got fired.

Q. A few days before?

A. I would say a few days.

Q. Two or three days before? A. Yes.

Trial Examiner Doyle: May I interrupt a min-

(Testimony of Harry M. Almada.)

ute? Was there some election coming up at that time?

Mr. Schoolfield: Mr. Examiner, I stand corrected by respondent's attorney on this. There has never been an election, but it has been talked of a consent election, which has never been consummated.

Trial Examiner Doyle: I thought there might have been some date on which an election was coming up and it might have some reference to these conversations, but if there was no date set for an election, or anything of that sort, it will have to stand just the way it is.

Mr. Schoolfield: The union had petitioned the Board sometime in May, I have the exact date here, for an R petition representation.

Mr. Langmade: Perhaps I can explain it this way. The union filed with the Board a consent to have an election. Thereafter in due course Texas Independent, the respondent, filed their [34] consent to have the election, but on the day or the day before we filed our consent, the union withdrew their consent to have an election. Therefore, the charges were pending and we were advised that there couldn't be an election without the consent of everyone. Thereafter, approximately three weeks ago, the union again consented and filed another consent to have an election, and the day after that, this respondent did receive notice that this hearing was to be held today and therefore we withheld giving our consent until now. Our consent now is

(Testimony of Harry M. Almada.)

at night I went to the Dixie because I had to fuel there. I stopped there and I had to wait there because there were three trucks ahead of me.

Q. The Dixie Truck Stop is in Lordsburg?

A. That is right. And I had to wait until they fueled three other trucks because there was only one diesel fuel pump there. And I was delayed almost two hours there awaiting my turn to get in at the pumps. They had been putting pressure on us for taking too long, and they even talked about they had to either cut the mustard or else, meaning they either had to bring the schedule in on time or they would be replaced. I was getting a little afraid because I had almost been fired at one time. And I was trying to make up for lost time when I left there and I was thinking about the fellows coming into the refinery ahead of me.

Q. Let us shorten this thing. Now, you made your trip; is that correct? A. Yes.

Q. Now, when did you talk to Mr. Quisenberry about it?

A. Well, I made my trip and I talked to Mr. Quisenberry when [37] I got back.

Q. What did you say to Mr. Quisenberry on the phone?

A. He called me to tell me we was moving into El Paso. He wanted us to be there, I believe he said, Monday morning. It was Sunday morning or Monday morning at 3:00 o'clock in the morning. And I told him, "All right. I will be there." And then when he got there giving me these orders,

(Testimony of Harry M. Almada.)

I said, "I have got something to tell you." And I was kind of half kidding because I didn't think he would fire me for something like that. I said, "I burned a tire on the road, I hope it doesn't get me into trouble." So he said, "Well, I will see the tire when I get into Tucson." And I told him where it happened and I told him how it happened. The tire went flat while rolling and I stopped, took the wheel off, went for my fire extinguishers—I had two, both of them dead. I took the tire off of the wheel, left it in the desert and went on in with my wheel on the spare tire rack. On the way back I got the tire and cradeled it back on the tongue of the trailer so he could see it. He said again, "I will see the tire when I get into Tucson."

Q. Did you say anything more to him in this conversation, Harry?

A. No, that just about wound it up there, but he called back again.

Q. Now, when did he call you back?

A. About midnight that night. [38]

Q. Now, what was this, June 2nd or June 3rd?

A. It was the night of the 3rd.

Q. All right, what did he say when he called you back at midnight?

A. He said, "Harry, I can't have fellows burning tires up and down these roads." He said, "George Wallsmith is going to take your truck. I am just going to have to let you go." I said, "That is all right." I wouldn't argue with him.

(Testimony of Harry M. Almada.)

Q. That is all that was said on that conversation?
A. That is right.

Q. That was the day you were discharged?

A. That is right.

Q. Let me get this straight, Harry. You had a conversation with him of how many hours before the conversation when he discharged you?

A. Well, he called me about 7:30 or 8:00 o'clock on June the 3rd and called me back around midnight on June the 3rd or early in the morning hours—I would say at 12:00 o'clock or about 12:00 o'clock so it would be early June the 4th or late June 3rd.

Q. Where was Mr. Quisenberry when he called you?

A. I would say he was right there in Lordsburg.

Q. How long have you been driving a truck?

A. All my life except five years in a mine and two or three years in a used car lot.

Q. How many years would you say offhand you have been driving [39] a truck?

A. Somewhere between 15 or 16 or 17 years.

Q. At this time would you explain to the Examiner just what burning a tire is. Does it happen often?

A. Burning a tire happens when you have a tire go flat while rolling. You wouldn't know of it because there is no way you can hear it go flat. As a rule, it will happen far away enough from you, motor noises and all, that you won't hear it.

(Testimony of Harry M. Almada.)

Q. Unless it blows?

A. When it blows, you would know about it. It is very seldom that you fail to hear it. But when it goes flat while you are rolling, there is no way you can tell.

Q. Have you ever been fired before for burning a tire? A. Never.

Q. Have you ever heard of anybody being fired for burning a tire? A. Never.

Trial Examiner Doyle: Let me get this straight. You say that you don't notice if a tire goes down. Is that because they are dual tires on these wheels?

The Witness: They are dual tires.

Trial Examiner Doyle: So the weight is taken off by the other tires and you don't know it?

The Witness: That is right. Sometimes if you are loaded, you have a chance there, because the load will knock the one tire [40] down enough and it will knock the rim off the flat one and it will make a noise, but when you are running empty like I was that night, the one holds the other one up so well that the rim doesn't even kick off. The ring itself that holds the tire does not fall out of the wheel there.

Trial Examiner Doyle: Mr. Witness, you are going to have to take it a little slower so the reporter can get it.

The Witness: Yes, sir.

* * * * *

Cross Examination

Q. (By Mr. Langmade): Mr. Almada, I believe

(Testimony of Harry M. Almada.)

you testified that [41] you had been driving trucking equipment for approximately 15 years.

A. That is right, about that much.

Q. And had a great deal of that time been spent with heavy equipment such as Texas Independent Oil Company had?

A. A good portion of it, yes.

Q. And you are familiar with that type of equipment?

A. Yes, sir.

Q. And you are also familiar with approximately the cost of the equipment, are you not?

A. Yes, I am.

Q. And you are more or less familiar with the rules and regulations that various trucking companies lay down to their employees, are you not?

A. Yes, sir.

Q. And you are also familiar with the way a truck operates?

A. Yes, I am.

Q. And I will ask you whether or not, and I understand this is the common expression, whether or not in your course of employment over the years, whether or not you ever did what they call bumping tires?

A. Yes, I have.

Q. And what generally is the time and place—when and where do you bump your tires—and would you explain to the Examiner what bumping tires means? [42]

A. Bumping tires is going around and either kicking your tires with your heel or toe of your shoe, or to use a metal tool of some kind to hit these tires to see that they are up and full of air.

(Testimony of Harry M. Almada.)

Q. Now, what is the general practice relating to bumping tires? How often do you do it?

A. Anywhere from 60 to 80 miles.

Q. And that is the general practice throughout the industry?

A. Different companies—companies that work on a standardized operation will give you that rule themselves. We don't have to guess or anything. They will tell you what they want you to do.

Q. But that is the standard practice?

A. Yes, it is with companies that work on a standard operation.

Q. Were you informed by Mr. Quisenberry that in working for the Texas Independent Oil Company you should bump your tires?

A. We had a lot on that but he changed so much that it was doubtful——

Q. Just answer my question. Did Mr. Quisenberry ever instruct you to bump tires?

A. He said to bump tires about every 60 miles.

Q. And did you have more or less specific places where you bumped your tires?

A. We used to stop at Deming and Las Cruces and bump our tires there.

Q. And also at Wilcox? [43]

A. I never went through Wilcox with Texas Independent.

Q. And how far out of Deming, New Mexico, were you at the time that you stopped and bumped them?

(Testimony of Harry M. Almada.)

A. I would say between 15, 16, 17 miles this side of Las Cruces when the tire went down.

Q. How far is that from Las Cruces?

A. On the other side of Deming.

Q. Las Cruces is east of Deming, is that correct?

A. East of Deming, going towards Las Cruces.

Q. Now, you knew what these trucks carried, did you not? A. Yes, sir.

Q. What was it?

A. It was empty at the time.

Q. And when you went full, what was that?

A. It would be gasoline.

Q. And you know that gasoline is very volatile?

A. Yes, I do.

Q. And in the event a tire is flat for an extended period of time, what happens?

A. It will smoke until you stop. If you stop and you lift your wheel with a jack and lift it up in the air or leave it set for too long, then it will catch fire. The fire is not there, it is smoking—I mean there is no flame as long as you roll; it just smoulders.

Q. But the minute you stop—— [44]

A. You have got to take the tire off.

Q. Immediately? A. Immediately.

Q. Now, when you are rolling empty, approximately how long does it take for a tire to heat up?

A. Well, that is hard to answer because it has been known in the heat of the day if you are traveling in the daytime, in the heat of the day it could be 10 miles, it could be five miles, five or ten miles.

(Testimony of Harry M. Almada.)

At night it could be anywhere from 10 to 15 miles if you are traveling fairly fast.

Q. Did you bump your tires at that time?

A. I bumped my tires when I left Lordsburg and they were all up.

Q. And how far away was Lordsburg from where you stopped?

A. Right about at that 80-mile point.

Q. Then you hadn't bumped your tires for a period of approximately 80 miles?

A. No, I hadn't.

Q. And you are familiar with the fact that the equipment is expensive equipment that you were driving?

A. Yes, I am. [45]

* * * * *

Q. Isn't the reason that you left this tire at the side of the road because it was too hot to put on the rack?

A. It was smoking and it would be dangerous to put it on the rack.

Q. And that was the condition of the tire.

A. There was nothing else I could do but leave it there. The fire extinguishers were dead and I had to leave it.

Q. In other words, it was hot enough to where it was ready to catch on fire, in your opinion?

A. If I had left it there, it would have caught fire, which it didn't it just smouldered.

Q. Didn't there come along two trucks and help you?

(Testimony of Harry M. Almada.)

A. There was a Western truck stopped first and then two of Texas Independent's.

Q. Didn't they ask you whether or not you had a fire extinguisher?

A. I don't believe they had one.

Q. Answer my question.

A. No, we was worried about the fire and I knew if they had a fire extinguisher—you don't have to ask for water if there is [46] a fire. If you have water, somebody will bring it out.

Q. I am asking your opinion as to how long this tire had been flat to get it as hot as it was before you stopped, having in mind that you were driving empty, and one other question preliminary to that is, what time of day was it?

A. I would say it was in the early hours of the morning, approximately between 2:00 and 3:00 o'clock in the morning.

Q. Having that in mind, the hour of the morning, the heat of the road, and the heat of the tire, how long would you say you had been driving with that tire flat?

A. Oh, I would say that that tire went flat and got hot within 15 miles.

Q. Now, Mr. Almada, at the time that you were employed by Texas Independent Oil Company, Mr. Quisenberry knew that you were a member of the union? A. Yes, I told him so.

Q. And he also knew that you had an active card with the union, did he not?

A. Yes, he did. [47]

(Testimony of Harry M. Almada.)

Q. And then did you recommend, I believe you said, other men? Do you remember who you recommended?

A. I recommended Harry Paine and also Joe Delgado.

Q. Do you know whether or not those men were union that you recommended?

A. I am not too sure on Harry Paine because we never talked too much about it. We was all afraid to talk amongst ourselves about the union. But I was sure of Joe Delgado.

Q. And he hired both of those men?

A. He hired both of those men.

Q. Are either one of them working there now?

A. I believe Joe Delgado is working there now.

Q. And these were men that you were sure did belong to the union? A. That is right.

Q. And you also stated that Mr. Quisenberry more or less asked you to be overseer and take charge of the end of the line where your stop was?

A. Yes, he wanted me to oversee on that end.

Q. And you told him you more or less wanted to be a driver?

A. At first I did, I wanted to be a driver.

Q. Did you feel he had confidence in you and knew your abilities?

A. I believe he must have at that time.

Q. And you think at that time it made any difference to him [48] whether you belonged to the union or didn't?

Mr. Schoolfield: That is a conclusion of law.

(Testimony of Harry M. Almada.)

Trial Examiner Doyle: Overruled.

Q. (By Mr. Langmade): Do you feel the fact that he asked you to become overseer and all of that was affected by the fact that you were a union man?

A. No, it was affected by the idea that I turn in my union book and pull a withdrawal card.

Q. But you had told him that you had always been a union man and would continue to be one?

A. I told him I had been a union man and had a book and if the majority wanted to go union, I would have to go with them because I was already union. You see, a withdrawal card does not throw you out of a union.

Q. I understand that. Have you worked on non-union jobs from time to time in the past over the 15-year period?

A. I have worked for one since I went in the union in 1940, and that was Southern Arizona Petroleum.

Q. How long did you work for them?

A. Oh, I worked for them, I was working really for Mr. Thompson and I believe I put about three or four months there.

Q. Did you keep your union card active during that time? A. I kept my book active.

Q. You kept your book active for how long?

A. All throughout. I have never lost it. [49]

* * * * *

Q. Have you ever seen Horace Steele?

A. I have never talked to the man.

(Testimony of Harry M. Almada.)

Q. Do you know whether or not he would know you?

A. I don't know whether he would or not.

Q. Do you have any reason to believe that he would? A. Not that I know of.

Q. Do you know whether he was in the State of Arizona or New Mexico or Texas during the time that you were employed by Texas Independent Oil Company?

A. By his talks, I gathered he was in Phoenix.

Q. By whose talks?

A. Mr. Quisenberry's.

Q. But you have no reason to believe that Mr. Steele knew you and wanted to fire you, did you?

A. No, we had no time to go up there and find out from him.

Q. So that was merely supposition on your part as to what Mr. Steele personally thought? [50]

* * * * *

. Trial Examiner Doyle: Before you take that up, there is just one question.

I think you gave this answer before, Mr. Witness, how did you come to discover that the tire was flat?

The Witness: Oh, I was traveling on, more or less under good conditions. It was night and it was dark but there was no storm, no clouds or no rain nor nothing to obstruct the view ahead or behind in the rearview mirrors, and there was a car trying to get around me. I later found out it was a woman driving it and when she finally made this pass—now, there was no cars [52] coming from up ahead

(Testimony of Harry M. Almada.)

and nothing from behind except this one woman driver on this one car. She whips out in the left lane as to pass and then all of a sudden pulls back behind my trailer. Well, with time driving you get to where you get suspicious of any movement that is odd, you see, and that struck me as being odd when she whipped back of this trailer, so I started studying her real close in the rear mirror when she came around the second time and when she came around the second time, I couldn't help but see the smoke where it was coming out underneath the trailer and I knew what that meant.

Trial Examiner Doyle: All right, your witness.

Redirect Examination

Q. (By Mr. Schoolfield): Harry, did Mr. Quisenberry ever reprimand you for speeding?

A. He never did.

Q. Did he ever tell you to slow down or anything like that? A. Never did.

Q. Now, you have explained that you bumped your tires at Deming; is that correct?

A. I always have before.

Q. You bumped them at this time—not at Deming, but at Lordsburg?

A. At Lordsburg, yes.

Q. You did not bump them at Deming?

A. No, I didn't. [53]

Q. You were unloaded, you were empty?

A. Empty.

(Testimony of Harry M. Almada.)

Q. And about, what was it, 80 miles from Lordsburg is when you noticed the flat?

A. Approximately, it could be a little less or maybe a mile more, but it would be right around 80 miles.

Q. Did you ever get any printed instructions from Mr. Quisenberry on the length of time which tires should be bumped?

A. No, not exactly. We talked about that but I myself suggested that we check our tires at Deming and Las Cruces, and he said he believed that would be all right.

Q. At Deming and Las Cruces?

A. Yes. But there were other times that that didn't hold because of those mad dashes on the desert to get to El Paso. There was no time for anything, not even such a thing as checking tires.

Q. On these mad dashes you are speaking of to get to the refinery by the time the gates opened, that is what you are referring to, is it not?

A. To get there before they closed the gates on us. [54]

* * * * *

WILLIAM J. JOHNSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you give us your full name and address, please.

(Testimony of William J. Johnson.)

The Witness: William J. Johnson, 2026 S. Amigo, Tucson, Arizona.

* * * * *

Q. (By Mr. Schoolfield): Mr. Johnson, where did you work prior to May 15, 1953?

A. I was working for Slim Quisenberry.

Q. Speak up real loud.

A. I was working for Slim Quisenberry.

Q. You were working for the Texas Independent Oil Company? A. Yes, sir.

Q. What were your duties? A. Driver.

Q. Driving trucks? A. Yes. [55]

Q. Did you drive practically the same type of truck as Mr. Almada has just testified?

A. The same.

Q. Will you tell the Examiner when you first had a conversation with Mr. Quisenberry about your job?

Q. Well, it was down at the 84 truck stop.

Q. What time of the year was it?

A. Around April 25th, approximately.

Q. And what did you say to Mr. Quisenberry at that time?

A. Well, Bill Turner and Al Jenson had requested to talk to Quisenberry about me and I told Bill Turner—well, I followed Bill Turner out to the truck stop. So after they got through talking to him, Turner introduced me to him. So he said, "Where did you drive before?" And I said, "For Western, Cantlay & Tansola."

(Testimony of William J. Johnson.)

Q. Who were Cantlay & Tansola, what did they do?

A. Well, it is a taching outfit with Western Truck Lines. It is all the same, practically.

Q. Go on.

A. Well, Turner introduced me to Quisenberry. He said, "This is the man I told you about." Then he asked me who did I drive for and I told him. He asked me was I in the union and I said yes, that I was in the union. I said, "I have a paid-up book." And he said, "Well, No. 11 is coming down from Phoenix in about three days," and that was just about all the discussion. [56]

Q. And when did you next have a talk with Mr. Quisenberry?

A. Well, I think that was the day I left, Johnny Cox and I went to Lordsburg.

Q. What day was it that you left?

A. I think it was around April 25th.

Q. April 25th you left where?

A. The 84 truck stop out there for Lordsburg.

Q. You saw Quisenberry again on that day?

A. No, it was about three days later.

Q. That you talked to Mr. Quisenberry again?

A. I didn't talk to him then. Our papers were there and Johnny Cox and I left.

Q. You went to work? A. Yes.

Q. When did you next talk to Mr. Quisenberry?

A. Well, I talked to him—I don't know, it was pretty regular.

Q. Did you talk with him about the union?

(Testimony of William J. Johnson.)

A. No. [57]

* * * * *

E. W. RICHINS, JR.

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you give us your full name and address?

The Witness: Either W. Richins, Box 1175, Lordsburg, New Mexico.

Q. (By Mr. Schoolfield): Mr. Richins, where were you employed prior to May 25, 1953?

A. With the Texas Independent Oil Company.

Q. What were your duties with that company?

A. A truck driver.

Q. Will you tell the Examiner when you were hired and your first conversation with any member of the management when you were hired. [72]

A. My first conversation was with Mr. Quisenberry over the telephone from Lordsburg to Tucson.

Q. About what time of year was that?

A. Oh, it was in the latter part of April, I couldn't say the exact day.

Q. Of 1953? A. Yes, sir, this year.

Q. And what did Mr. Quisenberry say to you over the telephone?

A. He said he would be in Lordsburg in the near future and could I meet him some place for a formal interview for employment.

(Testimony of E. W. Richins, Jr.)

Q. And what did you say?

A. We didn't specify any certain spot, but we mutually recognized each other upon meeting on the street and we went into Bill's Drugstore and carried our conversation on there.

Q. And what did you say in Bill's Drugstore?

A. Well——

Q. What did Mr. Quisenberry say to you after he met you?

A. Well, in the telephone conversation he previously inquired about my union standing and I told him I had a withdrawal card out in 1946 and we discussed the abilities and needs to operate Mr. Quisenberry's equipment, and I later wanted to know why he was interested in my union connections.

Q. Go on.

A. And he specified that he was looking for a non-union crew [73] and that I had been inactive in the union long enough that perhaps he thought he wouldn't have to worry about it. And he promised me the next truck into Lordsburg.

Q. Did he say anything about the scale of pay?

A. Yes, he said he paid better than union scale just to keep the non-union.

Q. Now, when did you have your first run after this conversation?

A. Well, several days passed and I talked to several people and it seemed like he had promised them the next truck, too, so I made a trip in my automobile to Tucson to see Mr. Quisenberry and

(Testimony of E. W. Richins, Jr.)

he said the next truck would come up in a bunch of three, not to worry about it and I would get the next truck.

Q. Now, did you have any discussion about the union with Mr. Quisenberry from that day until the day you were discharged, that you can recall?

A. Not involving me, not that I can remember.

Q. Were you given a test run?

A. I was given, you might say, two test runs.

Q. Who gave those to you?

A. I believe Bill Turner gave me my first one going west and Mr. Almada gave me my second one going east.

Q. Now, were you with Mr. Almada at any time when Mr. Quisenberry requested either of you to give him information about voting? [74]

A. Yes, I was.

Q. Will you tell the Examiner when this took place and what was said.

A. It was in front of Mr. Almada's home in Lordsburg, and there had been some talk——

Q. And when was this, Mr. Richins?

A. Oh, I'd say the 22nd, maybe, of May.

Q. I see.

A. There had been some talk of an election and naturally it was of interest to Slim so he asked me how I was going to vote, and he said, "Well, I shouldn't ask you that, that would be an unfair labor practice," but he says, "how are you going to vote?" Well, I didn't know what to say. I did have a withdrawal card and I didn't want to jeop-

(Testimony of E. W. Richins, Jr.)

ardize it in any way and at the same time I didn't want to jeopardize my job, so I told him I couldn't cut my nose off to spite my face.

Q. All right. Did he say anything else then?

A. Well, I guess it didn't register just then. He turned around and asked Harry and he said he didn't have to ask Harry, he knew what his answer would be.

Q. He turned to Almada and checked himself and said he didn't have to ask Harry, he knew what the answer would be; is that right?

A. That is right.

Q. Did Mr. Quisenberry ever make any statements to you and [75] ask you—did Mr. Quisenberry ever make any statements to you and can you place the time in which he referred to the vote and the job, if there was a vote?

A. I couldn't put a date with it. It was on numerous occasions. If we did vote union, we would vote ourselves out of a job.

Q. Now, he said that to you; is that right?

A. Yes.

Q. And on numerous occasions. Can you give us any reasonable estimate of time during your employment period when he said that to you?

A. Not offhand, no.

Q. But he said it to you many times; is that correct?

A. Well, several times, yes, sir.

Q. Now, will you tell the Examiner the instances it happened to you on May 15, the day of your

(Testimony of E. W. Richins, Jr.)

discharge, and where were you when this happened?

A. It was later than May 15.

Q. Excuse me, May 25th, I'm sorry.

A. Would you repeat that question?

Q. Yes. Where were you when you were discharged?

A. I had gone into the Dixie Drive Cafe on the east side of Lordsburg assuming that my truck would be there. I had no telephone, no means of them getting in touch with me. I just had to be there when the truck was there, or have some way of knowing [76] that it was there. Well, when I got there there were three trucks there, and I walked into the cafe and ordered my breakfast and there were two or three drivers there. I believe there were three drivers there, and I sat there talking to them and pretty soon these drivers decided to take off and each one of them declaring which truck they would take. I was asked which one I was going to take, and I said, "It looks like I am not going to take." There were three trucks out there and three drivers to drive them away. Then Slim told me they had put the pressure on him in Phoenix and he had to let me off.

Q. Did he say anything more about that pressure, what kind it was?

A. No, but I assume that it was probably my union connections, or something of that nature.

Q. Did Mr. Quisenberry ever give you a reason for discharging you?

(Testimony of E. W. Richins, Jr.)

A. Yes, he told me—I had transmission failure about 45 miles east of Lordsburg and it was due to that failure for them laying me off.

Q. Now, when did this transmission failure occur?

A. It was coming into Lordsburg loaded.

Q. And when, what time of the month?

A. I believe the 23rd—no, wait a minute, it was——

Q. Now, take your time.

A. I pulled several runs after that failure. The truck was [77] down three or four days being repaired after it went into Phoenix.

Q. Can you estimate how many days before your discharge you had transmission failure?

A. Oh, probably 15, more or less.

Q. Approximately 15 days?

A. Yes, sir.

Q. And Mr. Quisenberry told you at that time that that was the reason he was letting you go; is that correct? A. Yes, sir.

Q. Now, did you have any further discussion with Mr. Quisenberry after your discharge? Did you see him in town any time after you were laid off or fired? A. Yes, I did.

Q. Will you tell the Examiner approximately when that happened?

A. I believe that was—oh, it was nearly the last of May—no, it was in June.

Q. How early in June?

(Testimony of E. W. Richins, Jr.)

A. It was early in the month, right after they moved the operation to El Paso.

Q. Around the 4th, 5th, 3rd, can you estimate the date? A. No, I couldn't.

Q. Well, it was early June?

A. Early June, yes, sir.

Q. What did Mr. Quisenberry say to you then?

A. He said that he had heard that I had filed charges against [78] him with the National Labor Relations Board.

Q. What did you say?

A. I said I didn't know that I had gone that far. I said I had filed an affidavit with Bill Stratten stating what took place.

Mr. Langmade: I believe I am going to object to that in that what happened after the dismissal has no bearing here. I can't see where it would tend to prove or disprove anything in particular.

Trial Examiner Doyle: Well, I take it that the only relevancy that the conversation would have after the event was to the nature of the admission, or something of that sort. Now, whether they filed charges or not, this man or the union or anyone else, has no probative value. However, I overrule the objection on the basis that I expect there will be something in the nature of a proposed admission.

Mr. Schoolfield: That is correct.

Q. (By Mr. Schoolfield): Would you go ahead with this conversation, now, Mr. Richins, as to what Mr. Quisenberry said to you?

A. Well, Mr. Quisenberry wanted me to with-

(Testimony of E. W. Richins, Jr.)

draw my charges. I said I didn't think I could do either of us any good now by withdrawing those charges at this stage.

Q. Did he say anything about what he would do for you if you did withdraw the charges?

A. He said that if in the event the union put me back to work [79] or made him put me back to work, he would find means of getting rid of me. If nothing else, he would starve me to death. He would hold back my runs.

Q. Is that what he said to you?

A. Yes, sir.

Q. Did Mr. Quisenberry say to you anything about your being eligible for rehire?

A. Yes, he said when he discharged a man he put on their employment application or personnel file, whichever the case may be, whether they are subject for rehire or not. And in my case, he definitely promised me that I was, until I filed charges against them, eligible.

Q. Now, Mr. Richins, during this conversation, can you tell the Examiner where this took place in Lordsburg; where were you?

A. I was coming out of the post office at the time I saw Mr. Quisenberry and he was parked around the corner and we went to his car at his suggestion and sat there and talked.

Q. Did Mr. Quisenberry say anything to you about putting you back to work if you dropped charges?

A. He said I could move to El Paso.

(Testimony of E. W. Richins, Jr.)

Q. If you dropped the charges?

A. Yes, sir.

Q. Now, after you were discharged, Mr. Richins, did you seek further employment somewhere else?

A. Yes, sir. [80]

Q. Did you find a job?

A. Well, you might call it that.

* * * * *

Cross Examination.

Q. (By Mr. Langmade): And isn't it true that this is the first time that you have driven this type of heavy diesel equipment?

A. You might say it was the first diesel experience I had but not the first heavy-duty equipment experience I had.

Q. But that is the first diesel truck experience you had; is that correct?

A. That is correct, sir. [81]

* * * * *

Q. (By Mr. Langmade): Isn't it true that it was closer to five days from the time you had transmission trouble until the time you were discharged?

A. No, sir, because you can't make an El Paso-Phoenix turnaround in less than 24 hours, and I pulled three or four more trips after transmission failure, and the truck was in the shop at least three days or more getting repaired after the roadside repair job we did on it in Lordsburg.

Q. But at the time there was the truck failure, there was no knowledge on your part or Mr. Quisen-

(Testimony of E. W. Richins, Jr.)

berry's part as to what actually happened, but you knew there was something wrong with the transmission? A. How was that again? [83]

Q. I will withdraw that question.

* * * * *

Q. And you did know that the trucks are repaired in Phoenix; is that correct?

A. In cases it can be roadside repair; they are repaired on the spot.

Q. But this was more or less of a major repair?

A. It was patched up in Lordsburg and drove, probably, I believe it was tied up in Phoenix when it got here and unloaded.

Q. Now, are you familiar with how a transmission can be ruined? A. Yes, sir.

Q. How is that?

A. I do know that you never run a big gear and a little gear together or a power gear and a speed gear together; that with the proper handling and care, if the equipment wasn't faulty, that it wouldn't tear up.

Q. And doesn't it also depend on the ratio at which you shift gears from one gear to the other? In other words, your truck has to get a certain amount of revolutions per minute before you shift from one gear into the other?

A. That is right, if it is not ready to go, if it is not ready to shift, there is no way of putting it in there without [84] completely tearing it up. It would be just deliberately destroying it just like a little boy with a hatchet.

(Testimony of E. W. Richins, Jr.)

Q. Well, that is what is referred to as jamming them in place, is that right? You have to use pressure.

A. You have to use more than pressure. [85]
* * * * *

Redirect Examination

Q. (By Mr. Schoolfield): Mr. Richins, you have testified that after you had the transmission trouble you made more runs. Did you make the runs in the same truck in which you had transmission trouble? A. Yes, sir.

Q. Now, you drove that truck on three or four more runs after the transmission failure; is that right?

A. At least three more, I had another truck the last trip.

Q. I see. Now, when you drove the truck before your transmission trouble, did you know of a faulty transmission at that time in that truck?

A. Oh, you couldn't exactly trace it to a faulty transmission. We will say it was in a bad state of repair all over. I had nursed it up and down the highway from the time I got it to the time I got off it, for first one thing and then another.

Q. Did you ever advise any member of the management of that?

A. Someone was notified at the end of each trip about the mechanical failures of it.

Mr. Schoolfield: That is all I have.

(Testimony of E. W. Richins, Jr.)

Recross Examination

Q. (By Mr. Langmade): Now, isn't this true, Mr. Richins, that [87] you had faulty transmission trouble and then that transmission was removed and a new transmission was put in the truck; is that not correct? A. In my truck?

Q. Yes.

A. No, sir, I didn't follow it to Phoenix, so I couldn't say whether they even touched it or not, but I do know that it was roadside patched up in Lordsburg. The parts were robbed from another transmission similar to the one I had torn down and patched up enough to get to Phoenix. It may have just sat here three days.

Q. When it got to Phoenix, do you know whether there was a new transmission put in it?

A. No.

Q. When you got it back, when you got it back with the new transmission, you again had trouble?

A. No, I only had one set of trouble as far as transmission failure is concerned.

Q. Well, over how long a period of time did you have transmission trouble? When was the first time you had transmission trouble?

A. Just the first time when I broke down there and was tied into Lordsburg and it just happened in a matter of—there was no warning noises, it just let me down right in the middle of the road.

Q. Then you state the transmission was merely repaired, that there wasn't a new transmission?

A. No, sir.

(Testimony of E. W. Richins, Jr.)

Q. This wasn't a new transmission placed in the equipment?

A. No, Mr. Almada went down to help the company mechanic pull the transmission out and rob another transmission of the necessary parts to patch this one up to get the load of gas to Phoenix.

Q. When you put in the new gears, you said that you had automotive experience. Doesn't that practically make it the same as a new transmission?

A. If you replace every piece in that old case, replace the bearings, then you would have something similar to a new transmission, but when you go in an old transmission and rob a good gear out of it and put it in another old transmission, you have a long ways from a new transmission.

Q. But there was an entirely different set of gears placed in there?

A. No, sir, there wasn't an entirely new set of gears placed in there. As near as I can remember, we used the fifth gear out of the other transmission and maybe the counter shaft. There were notches as big as a nickel or maybe a little bigger than that out of some of the teeth of the transmission that we put together to get that truck into Phoenix.

Q. Well, normally, you having said that you had automotive [89] experience, when a transmission is fixed like that, shouldn't it run for a considerable time before it goes out again?

A. It depends on how it was fixed. In this roadside job, it wasn't fixed, it was patched up long

(Testimony of E. W. Richins, Jr.)

enough to get it to some place it could be fixed. [90]

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Examination

Q. (By Trial Examiner Doyle): Now, then, how did it come about that the other three drivers took out a truck and you didn't take out one?

A. I can't explain it. I don't know whether Mr. Quisenberry was going to let me know then or at some later date whether I had been fired or not. But this other party, they asked me what I was going to take and it caught me kind of off balanced and I said it doesn't look like that I am going to take. And then Mr. Quisenberry explained to me that they had put the pressure on him in Phoenix.

Q. Quisenberry wasn't there? A. Yes.

Q. He was there, too? A. Yes.

Q. What did he say to you and you to him about going out?

A. Well, I looked to him and I said "They put the pressure on in Phoenix and I had to let you go." If they hadn't put it on up there, I don't know when he would have notified me. If I hadn't been at the truck stop, maybe I would have still been wondering.

Trial Examiner Doyle: That clears up my mind on that point.

Mr. Schoolfield: I am finished with the witness.

Trial Examiner Doyle: Is there anything further?

Mr. Langmade: No. [91]

(Testimony of E. W. Richins, Jr.)

Trial Examiner Doyle: All right.

Just a minute, maybe counsel can refresh my recollection. When did this man go to work?

Mr. Schoolfield: Mr. Richins went to work around the 25th of April, I believe, Mr. Examiner.

Trial Examiner Doyle: And this transmission incident is supposed to take place when?

Mr. Schoolfield: About 15 days before his discharge, which was the 25th of May, he said. It was around April 10th or 12th, somewhere in there—I mean May the 10th or 12th.

Is that as near as you can remember, Mr. Richins, about 10 days before you were discharged, I think you testified ten, did you not?

The Witness: About that.

Q. (By Trial Examiner Doyle): Well, now, as I get it, you went to work on April 28th and you were discharged on May 25th.

A. Yes, sir.

Q. And the transmission incident took place about 10 or 15 days before May 25th.

A. Yes, sir.

Q. That would be about May 10th or May 15th?

A. Yes, sir.

Q. So you were on the job from the 28th to about May 15th before the transmission trouble?

A. Yes, sir. [92]

Q. Did you have any trouble with the transmission up to that time?

A. Not with the transmission, no, sir.

(Testimony of E. W. Richins, Jr.)

Q. Did you also drive the same truck all the time? A. Yes, sir.

Q. When did you first notice the trouble with the transmission?

A. Just about the instant when it quit.

Q. Where were you running from at the time you noticed that?

A. Oh, I was approximately 15 miles west of Deming or 45 miles east of Lordsburg.

Q. How did the trouble with the transmission disclose itself?

A. Well, when I first heard the noise, I didn't think it was transmission trouble at all, but that I had an engine failure, probably a connecting rod broken.

Q. What kind of noise was it.

A. Just a rattle, bang bang, and I immediately killed the engine and kicked it out of gear and got it off the road.

Q. That was the first of that kind of trouble you had?

A. Yes, sir, with that particular piece of equipment.

Trial Examiner Doyle: Are there any further questions?

Mr. Schoolfield: How long a truck were you driving, Mr. Richins?

The Witness: I believe it is a 1950 or '51 Sterling.

Mr. Schoolfield: Had there ever been a new

(Testimony of E. W. Richins, Jr.)

transmission in it of your own knowledge, do you know? [93]

The Witness: Mr. Doolittle or the company mechanic said that the only reason that transmission hadn't been replaced before now was it was a situation where the larger transmissions weren't available. He said that was too small a unit for the load it was pulling.

Mr. Schoolfield: Too small?

The Witness: It was too small a transmission for the gasoline trucks.

Q. (By Trial Examiner Doyle): You were there when the transmission was pulled out, were you?

A. Yes, sir, I made it a point to be there.

Q. What was wrong with it?

A. The fifth gear broke half in two and fell off the counter shaft down among the other gears thus locking it so nothing could move. Incidentally, I shut it off before I had a chance to break the cast iron housing or even spring the case.

Recross Examination

Q. (By Mr. Langmade): Mr. Richins, can I just ask you one more question on this?

A. Yes, sir.

Q. The transmission locked just like you said, then it was taken into Lordsburg and patched up and taken on into Phoenix; is that correct?

A. That is right.

(Testimony of E. W. Richins, Jr.)

Q. Then you don't know what happened to the transmission in [94] Phoenix?

A. No, sir, I don't know. I know that three or probably four days went by before the truck came back.

Q. Then the truck came back?

A. Yes, sir.

Q. And then you again went on that truck and you had transmission trouble again?

A. No, sir, I had transmission trouble once and once only.

Q. You never drove that truck after it left Lordsburg going to Phoenix?

A. Yes, sir, I made three or probably four runs on that truck but I had no more transmission troubles with it.

Q. No more transmission trouble?

A. I have no actual proof but I have heard later other men did have trouble with it before they got the big transmission to replace it with, but I had no more trouble with it.

Q. You mean up to the time you were discharged?

A. From the first breakdown until the time of my discharge, I had no more trouble.

Q. At the time of the discharge, there was nothing wrong with the transmission?

A. It would get down the road and get back.

Q. That is not what I am asking you.

A. I can't say there was anything wrong with it without tearing into it and making an inspec-

(Testimony of E. W. Richins, Jr.)

tion. From the outside appearance, [95] no, there wasn't.

Q. But you knew the first time that it was transmission trouble but you didn't know the second time that it was; is that correct?

A. I didn't say that.

Q. Well, then, what was wrong with it at the time you were discharged?

A. That was Slim's excuse for discharging me, was the transmission failure.

Q. The second time?

A. No, the first time. I only broke it once.

Trial Examiner Doyle: Counsel seems to be asking a question which to me seems to be quite simple and the question is this, Mr. Richins: The transmission broke down once?

The Witness: Yes.

Trial Examiner Doyle: And you made a patch-up repair and it went to Phoenix and I understand it there a more thorough repair job was supposed to have been done on it and then the truck came back to you and you made two or three more runs?

The Witness: Yes, sir.

Examination

Q. (By Trial Examiner Doyle): Now, after it was delivered to you after Phoenix and you made these two or three more runs, did you notice anything wrong with the transmission after that?

A. No, sir. [96]

(Testimony of E. W. Richins, Jr.)

Q. Now, during this time that you were driving for the company, did you change your status with the union in any way from withdrawal card to taking out your book or becoming a member in good standing?

A. I am still on the same withdrawal card. There was an application signed but it was never carried any further. There was no money involved, no money changed hands.

Q. Did you do anything in regard to the union during this period? A. No, sir.

Q. Were there any union meetings of the men during this period?

A. To Mr. Quisenberry's men?

Q. I mean of any of you drivers, were there any union meetings?

A. I didn't discuss the union activities with the drivers.

Q. You didn't discuss it with anybody, then, I take it?

A. I seen Mr. Stratten once in Lordsburg but that was just between me and Mr. Stratten.

Q. Who is he?

A. He was the Local 104 representative in Phoenix.

Redirect Examination

Q. (By Mr. Schoolfield): Mr. Richins, did you sign a union application blank during your employment with Texas Independent? A. Yes.

Q. And there was union activity during that time, was there not? [97] A. Yes.

(Testimony of E. W. Richins, Jr.)

Q. Boys were signing blanks?

A. Yes, sir.

* * * * *

JOHN COX

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Give your full name and address to the reporter, please.

The Witness: John Cox, 850 East Navajo, Tucson, Arizona.

Q. (By Mr. Schoolfield): Now, Mr. Cox, you are going to have to talk slowly and loud and just take your time, nobody is going to rush you.

Where were you employed prior to May 15, 1953, Mr. Cox. A. Texas and Independent Oil.

Q. When were you employed by this company?

A. April 25th.

Q. 1953? A. Uh-huh.

Q. What were your duties? [98]

A. Driver.

Q. A truck driver? A. Yes.

Q. Did you drive the same type of trucks as the other witnesses who have testified?

A. Yes, sir.

Mr. Langmade: May we go off the record for just a second?

Trial Examiner Doyle: Yes. Off the record.

(Discussion off the record.)

(Testimony of John Cox.)

Trial Examiner Doyle: On the record.

Q. (By Mr. Schoolfield): When did you first talk with a representative of the company, Mr. Cox, would you tell us that?

A. On April 21——

Q. Speak up real loud.

A. April 21, I went to Quisenberry's house——

Q. Much louder than that, I don't think the Examiner can hear you. Sound off.

Trial Examiner Doyle: You are a big fellow but you have the softest voice and you are the softest-spoken gentleman I have ever heard. Sometimes I have a case where we have these little girls and they speak up so everybody can hear them. Let us keep the voice up. I have to hear you; the reporter has to hear you.

A. Well, on April 21, I went to Quisenberry's house.

Q. That is good. All right. [99]

A. Can you hear that?

Trial Examiner Doyle: Yes, that is fine.

A. So Al Jenson went with me and introduced me to Quisenberry, and so we talked about jobs and the runs and the pay and first one thing and then another, and then Quisenberry asked me if I was union and I told him no. So Al Jenson said no, that we both went delinquent in 1947. So Quisenberry asked me what I had been doing, what I had been driving at and I told him I had been working for my brother-in-law and so that about ended the conversation.

(Testimony of John Cox.)

Q. Did he ask you about how long you had been driving a truck? A. No.

Q. Did you take a student run when you went to work for the company? A. No.

Q. You just jumped on a truck and started driving? A. That is right.

Q. Did you ever have a further conversation with Mr. Quisenberry concerning your union book and when did this take place, if you had one?

A. Well, it was on or about May 1st. I went up to Quisenberry's house to get my load papers and we were talking and Quisenberry said, "Are you still keeping your book paid up?" And I said, "Yes." And so everything was silent for a little while and he [100] "How would you vote if it came up?" I said, "Oh, I don't know, I am undecided." So nothing else was discussed about that matter at that time.

Q. When did you next have a conversation with Mr. Quisenberry concerning the union?

A. Oh, it was about the 11th or 12th of May.

Q. And where did that conversation take place?

A. It was out at the 84 Truck Stop. We were just sitting there drinking coffee and talking and he asked me, "Johnny, how would you vote if it came up, if there was an election come up to see if the drivers wanted a union?" And I said, "Oh, I don't know, I am still undecided."

Q. Now, that was the second time?

A. Yes.

Q. May the 1st and then on May 11th or 12th?

(Testimony of John Cox.)

A. Yes.

Q. Now, did you have a discussion with Mr. Quisenberry about the union on May 15th, Mr. Cox?

A. Yes, I did.

Q. Will you tell the Examiner what took place then?

A. Well, on May 15th I came in from Phoenix from my run and I called Quisenberry up to report in to see when I went on again and first one thing and then another.

Trial Examiner Doyle: I can't hear you.

A. So he said, "Well, come on out to the house, Johnny, I want [101] to talk to you." So I said, "O.K.," so I went out to his house and said, "I just received a letter from Tucson and El Paso unions today and I *through* it in the waste basket." and he said, "I am definitely not going union."

Q. Go ahead. Now, what else did he say to you at that time?

A. That was about it.

Q. That was the day you were fired, was it not?

A. Yes.

Q. What did he say to you about discharging you, Mr. Cox?

A. He asked me how I was going to vote if it came up and I said, "Well, I don't know. I am undecided." He said, "Being you are undecided and still keeping your book up, maybe you had better get out and get a union job." So I said, "Well, O. K." He said, "You had better get out and get a union job because I am definitely not going union." So I said, "Well, O. K." He said, "Well,

(Testimony of John Cox.)

you figure up your trip sheets and I will call in Phoenix——”

Q. Now, speak up.

A. He said, “Well, you figure up your trip sheets and I will call Phoenix and you’ll have your check down there Monday.”

Q. Now, did he tell you any reasons at that time he was going to give for your discharge?

A. He said, “I know I can’t come out and fire a man for joining the union, but I will find a reason and make it stick.” And I said, “Well, what kind of reason are you going to use on me?” [102] And he said, “I am going to use that chart that shows you were running 58 miles an hour.”

Q. A chart which showed you ran 58 miles an hour? A. Yes.

Q. Now, will you explain to the Examiner the instance of that chart as near as you can remember it? Were you told to run 58 miles an hour? How did it happen?

A. Yes, on the second trip, on that particular truck, No. 7, I told Quisenberry out at the 84 Truck Stop, I said, “Quesy, running 55 miles an hour in that truck, it is not running but about 1,700 r.p.m.’s, why don’t you let me run it at 1,900 r.p.m.’s?” I said, “Why don’t you let me run it on up to 1,900 or 1,950, and I won’t be making but 58 miles an hour?” And he said, “Go ahead, keep the motor revved up where it should be.” So that is what I did. And I told the relief man on the other end to run it 1,950.

(Testimony of John Cox.)

Q. Now, Mr. Cox, would you explain to the Examiner the reason why it is advisable to run a truck motor around 1,950 to 2,000 r.p.m.'s?

A. Well, that is the cruising speed on one; it is where it should be run to keep the motor running free.

Q. Speak loud so the reporter can get it. What is the reason you want to run it up there?

A. You don't want to lug the motor. You want the motor running free. [103]

Q. Now, this particular No. 7 truck, what speed would it run in the gear at 1,950 r.p.m.'s, in the fourth gear, let us say?

A. Well, it would probably run around about 50 miles an hour.

Q. And in fifth gear what would it run?

A. Well, at 1,950 it would run 58 miles an hour.

Q. And any r.p.m. below 1,950 to 2,000 is lugging; is that correct?

A. No, anything below 1,900.

Q. How about above 2,000, what happens then?

A. Well, above 2,100 is overtaxing it.

Q. I see.

A. And you are endangering it.

Q. And Mr. Quisenberry told you to run that truck free to keep from lugging it up, that the r.p.m.'s were the important thing. A. Yes.

Q. And you drivers, do, do you not, gage your speed by gears and keep your engine revved at a certain r.p.m. at all times? A. Yes.

Q. For instance, if you want to drop it down to

(Testimony of John Cox.)

30 miles an hour, you might want to use third gear or second gear? A. Yes.

Q. But your engine is going 1,950?

A. Yes, between 1,900 and 2,100.

Q. Now, you testified that Mr. Quisenberry, when he discharged you, told you that the reason that he was going to give was 58 [104] miles an hour? A. Yes.

Q. And he had the tach chart or card?

A. Yes.

Q. And this is the instance under which you remembered turning in a 58-mile-an-hour tach card; is that correct? A. Yes. [105]

* * * * *

Cross Examination

Q. (By Mr. Langmade): Here is one thing I am confused on, Mr. Cox, and that is you testified in the beginning that you were delinquent and had a withdrawal card since 1947?

A. I didn't say nothing about a withdrawal card.

Q. You merely paid no dues since 1947?

A. That is right. I said we went delinquent in 1947.

Q. And were you a member in good standing when you were delinquent? A. What?

Q. And were you a member in good standing when you were delinquent?

A. I never have been delinquent. That is what I told Quisenberry. [107] At the time I told him

(Testimony of John Cox.)

that, I was in good standing and my book was paid up. In other words, I lied to Quisenberry.

Trial Examiner Doyle: As I understand your testimony, when you first went to work, he asked you if you were a member of the union and you said you weren't; is that it?

The Witness: That is right.

Q. (By Mr. Langmade): But that was a lie?

A. Yes, that was a lie. In order to get the job, I had to tell him that.

Q. And at that time and at all times prior to that time and up to and including the present time, you have been and you are now a fully-paid union member?

A. Oh, yes. [108] * * * * *

Q. Now, hadn't you been warned by Mr. Quisenberry once before the time you were discharged that you had been exceeding the speed limit?

A. Never.

Q. Did you know what the company's speed limit was?

A. Yes.

Q. What did he say it was? [109]

A. Fifty-five.

Q. And wasn't it after he had warned you about speeding that you told him that that truck ran better at 58 miles an hour than it did at 55?

A. Well, to start with, he never did warn me.

Q. Well, was Mr. Almada your partner on the other end?

A. He was on No. 15 but he wasn't on No. 7.

Q. And do you know whether or not he followed

(Testimony of John Cox.)

your instructions and exceeded the speed limit on his end of the run?

A. Well, he wasn't driving No. 7 and I don't know.

Q. But you told him to go more than that?

A. No, not Harry Almada, no.

Q. Who did you tell?

A. Gene Bowers or Glenn Bowers whatever his name was.

Q. And whether or not Glenn Bowers went more than 55 miles an hour, you don't know?

A. I don't have any idea.

Q. If these charts which show that he didn't, they would be accurate, would they not?

A. Well, I don't know whether they would or not.

Q. Well, have you been driving for quite some time?

A. Yes. I have been driving all my life.

Q. As a general rule—

A. I don't know whether he went over 58 miles an hour or not, I don't know. I never took the chart out to look. I know I drove [110] between 55 and 58 miles an hour. Whether he did or not, I don't know. I didn't go with him on the trip.

Q. And then at the time you were discharged, didn't Mr. Quisenberry say to you that it is a company rule that you cannot exceed 55 miles an hour when your tachograph shows that for long periods of extended driving you have been going 60? Where

(Testimony of John Cox.)

had you been employed before the time you went to work for Texas Independent Oil Company?

A. Well, how long before?

Q. Well, within the last six months?

A. I was employed four years for Bonds Trucking Company out of Phoenix.

Q. James Bond? A. Uh-huh.

Q. He is a dump truck operator?

A. Yes. Before that I worked for Hopper Transportation.

Q. Well, you had been working for the last four years prior to the time you took this job for James Bond? A. Uh-huh.

Q. The four years you were employed by Mr. Bond, you didn't operate any type of equipment that was similar to this equipment of Texas Independent Oil Company?

A. Well, they was diesels but they wasn't this type.

Q. They were all small dump trucks, were they not?

A. No, they were water trucks, 5,500 gallon tankers. [111]

Q. Now, you say that Mr. Quisenberry said to you one day, "Are you still keeping your book paid up"? A. Uh-huh.

Q. When did he finally find out you were a fully paid member?

A. I don't think he knew; I think he was just guessing in the dark.

Trial Examiner Doyle: On that occasion, as I

(Testimony of John Cox.)

understand it, you said you were keeping up your book?

The Witness: Uh-huh, yes, sir.

Q. (By Mr. Langmade): How long actually had you been employed by the Texas Independent before your discharge?

A. Oh, about 25 days.

Q. Pardon?

A. Twenty five days; April 25 to May 15.

Q. Well, you first said you went to work on April 21st?

A. I didn't say I went to work on April 21st. I said I went to see about a job on April 21st.

Q. All right, when was it you actually were employed?

A. April 25th was when I actually went to work.

Mr. Langmade: I believe that is all.

Redirect Examination

Q. (By Mr. Schoolfield): Mr. Cox, you stated you worked for Hopper before you went to work for Texas Independent?

A. No, I worked for James Bond before that.

Q. Now, what type of company did Hopper have? [112]

A. They have livestock rigs.

Q. About how much experience did you have on diesel trucks before you went to work for Texas Independent?

A. For four or five years.

Q. That you had driven them that much?

A. Uh-huh.

(Testimony of John Cox.)

Q. And you also stated before that you weren't even given a test run; is that correct?

A. That is correct.

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KENNETH L. VAN HORN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Give us your name and address, please.

The Witness: My name is Kenneth L. Van Horn. My present address is 66 Truck Stop, Tucson.

Q. (By Mr. Schoolfield): Now, Mr. Van Horn, when did you go to work for the respondent company?

A. Well, on or about approximately May 1st.

Q. On or approximately May 1st, 1953?

A. Yes, sir.

Q. When were you discharged?

A. On May 12th, the same month.

Q. May the 12th of the same month?

A. Yes.

Q. You worked approximately 12 days?

A. Approximately that.

Q. Will you tell the Examiner what happened? What conversations you had with Mr. Quisenberry on May 12 when you were discharged?

A. Well, on May 12 I had just made a run to

(Testimony of Kenneth L. Van Horn.)

Phoenix—do you want the conversation after I came back?

Q. I want to know where you were when you talked to Mr. Quisenberry.

A. I was at the 84 Truck Stop.

Q. And what were you doing when you first saw Mr. Quisenberry that day?

A. Well, we all met at the 84 Truck Stop in the Cafe.

Q. Were you sitting with Mr. Quisenberry and some others at that time?

A. I was sitting with Slim and myself on one side of the booth and Stew Seymour on the other.

Q. Speak up Mr. Van Horn.

A. Stew Seymour and I, and I don't know who the other party was. It was either Mr. Nutter or Mr. Saner.

Q. How come you got in a conversation with Mr. Quisenberry at that time?

A. Well, we was all just more or less talking truck talk there for awhile until one of the trucks came in.

Q. I see.

A. One of the trucks came in and everybody got up to leave to go outside and I started to go outside and Slim said, "Wait a minute, I want to talk to you."

Q. He said, "Wait a minute, I want to talk to you"? A. Yes.

Q. What did you do?

A. Well, I sat back down and he said, "Well,

(Testimony of Kenneth L. Van Horn.)

Van, I got your check for you." I said, "What do you mean, my check"? He says, "Who did you talk to today in Phoenix"? I said, "What do you mean, what do you mean who I talked to"? He says, "You talked too much. That old boy you was just talking to up at Blakely No. 1 is old man Steele's right-hand man." He says, "As soon as you left there, he went right directly to the old man, to old man Steele, and told him you were instigating the union." I said, "Hell, I didn't say nothing to that old man."

Q. All right.

A. He said I was around there talking about——

Q. Now, this was the fellow you saw at Blakely's where you were loading gas?

A. Unloading.

Q. Before you saw Mr. Quisenberry?

Mr. Langmade: Will you name the individual?

The Witness: That I was talking to?

Mr. Langmade: Yes.

The Witness: No, I don't know who it was. Slim mentioned his name at the time but I never heard of it.

Q. (By Mr. Schoolfield): What did Mr. Quisenberry say to you at the 84 Truck Stop. Keep on with that conversation.

A. Well, he said this man went right directly to the old man, to old man Steele and told him what I had said.

Q. Go on.

A. He says, "When I went in the office today,

(Testimony of Kenneth L. Van Horn.)

the old man jumped down my throat." He said he asked him, "Who is this guy that was unloading down at Blakely No. 1 today?" And Slim told him. He said, "Well, you'll have to get rid of him. He is instigating the union."

Q. And what did you say?

A. I told him, I says, "Hell, Slim, I wasn't talking to the old man. All he did was ask me about different fellows that work down there and he asked me about particular ones and he said, 'How are you coming on the union deal?' I says, 'So far there hasn't been too much said about it. There was talk about [116] passing out blanks, getting to go union.' and he says, 'You are about to get it organized.' Actually, I didn't know who it was. I thought he was the worker around the station and he was getting in my way and I was trying to get unloaded." And he says, "Do you think you'll get organized?" And I said, "Yes, maybe one of these days we will," and I just went on about my business.

Q. That is the conversation you told Mr. Quisenberry in the 84 Truck Stop?

A. He was repeating the conversation he had with Horace Steele and I was repeating the conversation I had with the fellow at the station.

Q. I see. Now, what else did Mr. Quisenberry say about your discharge?

A. Well, at the time I told him, when he first told me about it, I got to thinking about it and I said, "Slim, I think it is a 'chicken blank deal'."

(Testimony of Kenneth L. Van Horn.)

and I said, "I didn't say nothing to the old man out of the way. I don't know who he was. I never tried to instigate the union. All I have done, they passed out blanks and I signed one of the blanks because I was a union member," and Slim knew that when I went to work.

Q. When you went to work, did Mr. Quisenberry ask you if you were a union member?

A. Yes, he did.

Q. And what did you tell him? [117]

A. I told him I was out on withdrawal from 692 in Long Beach, California.

Q. In Long Beach, California?

A. Yes, sir.

Q. And you testified that Mr. Quisenberry said, "Well, the old man said get rid of him for instigating the union"? A. Yes.

Q. And he gave you your check?

A. Yes, he already had it made up.

Q. That was May 12, 1953?

A. I am not positive about the date, but it had to be either a day before or a day after, because I haven't got the check stubs to say sure it was the truth.

Trial Examiner Doyle: That is to the best of your recollection?

The Witness: Yes.

Q. (By Mr. Schoolfield): Did you talk any more to Mr. Quisenberry at that time?

A. Yes, well, I told him—he made me kind of sore when I got discharged like that and I told

(Testimony of Kenneth L. Van Horn.)

him it seemed like to me if I was in charge of a group of men, I would have the say-so on who I hired and who I should fire, and I told him I thought it was a pretty chicken deal and he should do something about it because he was satisfied with my driving. He had never complained in any way about it. [118]

Q. Did you talk with Mr. Quisenberry any more that night?

A. Yes, after he and I left he took me home down to the motel where I was staying. And we talked there and I told him again about the chicken deal and he said, "Yes, I guess it is. I admit that it is," he says, "but my hands are tied, there is nothing that I can do about it." But he says later if he had to go union, that I could come back to work.

Q. Now, Mr. Van Horn, how long were you off work after that?

A. Well, actually, I haven't worked but about six weeks since then.

Q. Now, where are you working right now?

A. Texas Independent.

Q. You are back working with the company again? A. Yes.

Q. When did you start back with the company?

A. Well, I talked to Mr. Quisenberry a week ago Friday, I believe it was.

Q. All right. What did he say to you then?

A. I asked him about a job and he asked me how bad I needed a job and I said, "Pretty bad."

(Testimony of Kenneth L. Van Horn.)

He said, "Well, I need some men in El Paso." At that time he never said anything about needing men in Tucson.

Q. He said he needed men in El Paso?

A. Yes.

Q. Were you in El Paso at the time you talked to Mr. Quisenberry? [119]

A. No, sir, I had called him from Chandler.

Q. From Chandler, Arizona?

A. Yes, sir.

Q. Now, what did you do then? Did you go to El Paso?

A. No, he told me that he would stop by on his *out* and see me. Well, I thought maybe I might miss him so I got in the car and drove to Phoenix and saw him at the plant.

Q. And you were then rehired by the company?

A. I was rehired. I made out my withholding statement but he changed, he said, "I want you down in Tucson," and I asked him, I said, "I will go to Tucson but later I would like a chance to transfer to El Paso."

Q. You were in El Paso then?

A. I came down to Tucson and pulled one trip to Phoenix and came back, and Jenson was talking to him on the phone in El Paso. I told Al to ask him if I could come down and work on the same truck on that end and he said, "Yes, tell him to be down here ready to go tomorrow night."

Q. Did you have any union conversation with Mr. Quisenberry around the time you were rehired?

(Testimony of Kenneth L. Van Horn.)

A. Well, just that he said, "Well, now, about this union deal, I am not going to tell any man how to vote." He says, "But I still want it non-union." I says, "O. K., Slim, that is the way it will be then." That is what I said. And he said, "Now, understand, I am not going to fire anybody regardless of how he [120] votes."

Q. He told you he wasn't going to fire anybody and this was just last week?

A. Just last week.

Q. Now, would you tell the Examiner more definitely exactly when you started back working for the company?

A. I started last Monday morning.

Q. This past Monday morning? A. Yes.

Q. Let's see, this is the sixth—

Trial Examiner Doyle: You don't mean yesterday. Was it a week ago yesterday?

The Witness: A week ago yesterday.

Q. (By Mr. Schoolfield): That would be around September 28.

Now, did you have a conversation around last Wednesday night with Mr. Quisenberry about the union?

A. Oh, last Wednesday night, I am not sure it was Wednesday. I think it was Wednesday. We were in El Paso at the refinery and it so happened that I was supposed to go out that night and later that night I got down there and he had already promised another man to go out on it. So he told me that that man's truck was broken down and he

(Testimony of Kenneth L. Van Horn.)

was entitled to go out that night, that I would be able to make the next trip. And during that conversation I asked him about—or he said to me about the union, “Now, about this union, I don’t want it union.” He says, “I am not going to [121] tell any man how to vote but I don’t want the union.”

Q. Did he mention anybody’s name, any of the drivers’ names at that time?

A. Yes, I think it was brought up. He said, “No.” He told me then, he says, “I have to appear in court.”

Q. All right.

A. And I says, “Oh, yes, I remember my wife saying that Al got his subpoena.”

Q. Al who? A. Al Jenson.

Q. And then what did Mr. Quisenberry say?

A. He said they had him for some unfair labor act, or something.

Q. Did he say anything about the group back on the Tucson end?

A. Yes, he said, “I have no doubt about what everybody on that end will go union.” He said, “They have a pretty bunch of boys down here and I think they will stick with me,” meaning El Paso.

Q. Did you ask Mr. Quisenberry about your seniority when you had just gone back to work?

A. Yes, I said, “Slim, it is like this, you know I got a pretty chicken deal up there at Tucson.” He said, “Yes, I will admit it.” And I said, “All right, if I come back and go non-union, will I get

(Testimony of Kenneth L. Van Horn.)
 my seniority standing?" And he said, "Yes, you are damn right, you will."

Q. Is that all he said at that time? [122]

A. I believe that is all the conversation then.

Mr. Schoolfield: Pass the witness.

Mr. Langmade: Mr. Examiner, may I have a few minutes?

Trial Examiner Doyle: All right. Let us have a five minute recess.

This is one of the men whose name was added to the complaint, was it not?

Mr. Langmade: Yes, sir.

* * * * *

Cross Examination

Q. (By Mr. Langmade): Mr. Van Horn, who had you been employed by prior to the time you went to work for the Texas Independent Oil Company on May 1st?

A. Refiner's Co-operative, Incorporated, Bell, California.

Q. Was there anything said about your union membership or non-membership at the time you were employed?

A. Nothing other than he asked me if I was union and I told him I was out on withdrawal.

Q. How about the present time, are you on withdrawal now?

A. I am on the same standing, a withdrawal from another Local, though.

Q. Now, is this true, that on the 10th day of May you were to [123] take a run out at 7:00 a.m.

(Testimony of Kenneth L. Van Horn.)

in the morning and you weren't there and Mr. Quisenberry happened to be at the place you were to pick up the truck and went over to get you, is that correct?

A. That, I can't remember, because I was living just two blocks from the truck stop.

Q. Do you remember him coming over and waking you up? A. Yes, I do.

Q. And did you know you were to get out at 7:00 a.m. that morning?

A. He told me he would go out and have the man stop by and wake me up when he came in.

Q. And then on the 12th you were to take a truck out at 3:00 a.m. in the morning; is that correct? A. May 12th?

Q. May the 12th, the day you were discharged?

A. I don't remember exactly what time I was to take it out, but I was there to take it out. I spent more time there than I did at home.

Q. Isn't it true that on the morning of the 12th you arrived to pick up the truck around 5:00 a.m.?

A. I don't know. Somebody came down and woke me up that morning. In other words, that was the understanding. I had spent so much time waiting around for trucks that he said it was no need of it. He said, "You may as well go to bed and when the driver comes in, I will come down and get you." [124]

Q. Didn't you tell Mr. Quisenberry when you got over there that you were sorry that you had slept in? A. No, sir, I didn't.

(Testimony of Kenneth L. Van Horn.)

Q. Isn't it true that the truck was gone when you got there, the truck you were supposed to take?

A. No, sir, at that time they were so messed up on the drivers, nobody knew who was going to drive what. Part of the time when you got down there another driver would be on your truck and you would never know who was going to drive what.

Q. Didn't you know on the morning of the 12th that you were to be there at 3:00 a.m.?

A. No, sir. I don't remember exactly what time it was supposed to leave, even. I was never supposed to be up to the truck stop. I spent most of my time there but the understanding was that when the trucks came in, instead of me standing around there not getting any sleep——

Q. Didn't you know you were supposed to take a truck out that morning?

A. If one came in and somebody came in and woke me up, I know I was supposed to take it, whatever it was.

Q. Now, you say somebody came in at 5:00 a.m.?

A. I don't know; I don't know what time.

Q. Do you know approximately what time it was?

A. No, I couldn't say for sure, because I couldn't even say what time it was I got to Blakely No. 1 in Phoenix. [125]

Q. Well, then, is it true that you didn't take a truck out until 2:00 p.m. that afternoon?

A. I wouldn't say so. I think, I am not sure, I think it was sometime in the morning.

(Testimony of Kenneth L. Van Horn.)

Q. Well, you have been quite positive on the rest of your statements, can you sort of refresh your memory as to whether or not, if you got there—was it early in the morning that you got there?

A. Where, in Phoenix or at the truck stop?

Q. Where you were supposed to take the truck from.

A. Well, I was there as soon as they came down and woke me up. That was long enough to get up and put my clothes on and go down and pick it up.

Q. When you got there did you take off?

A. I remember I made a trip to Phoenix that day, so I must have.

Q. Well, it was not until 2:00 p.m. until another truck came in? A. No.

Q. Do you remember approximately what time you did get there in the morning?

A. Well, I got in that night and it was just getting dark and it is about, on an average, a two and a half to three hour run.

Q. That is on the night of the 11th?

A. The 12th; it was the 12th I am talking about.

Q. Is this true, that you took a truck out at 2:00 p.m. from Tucson to Phoenix and in that distance you made your turnaround and came back to your home base at Tucson?

A. Will you repeat that question.

Trial Examiner Doyle: I am a little bit confused here, too, now. Are we talking about the morning of the 12th when this man was allegedly discharged?

(Testimony of Kenneth L. Van Horn.)

Mr. Langmade: Yes, it all happened during the same day.

Trial Examiner Doyle: I wasn't quite clear about that.

Q. (By Mr. Langmade): What time did you arrive back in Tucson that night?

A. All I know is just around dark, dusk, dark when we got back.

Q. And that was in May, is that right?

A. May 12, I think, I am not positive.

Q. And the sun goes down around 8:00 p.m.?

A. Well, I would say I got back approximately around 6:00 would be more like it.

Q. Well, you said it was dusk. Is it dusk at 6:00 o'clock?

A. We went inside the cafe and I imagine we sat in there for an hour or so. At least when we came out, it was dark.

Q. All I want you to do is just tell me the truth.

A. That is what I am telling you.

Q. You do remember it was dusk?

A. No, I said I think it was dusk.

Q. All right, then, placing the time at 6:00 p.m., it couldn't [127] have been any earlier than that, could it?

A. It could, possibly.

Q. And how long does it take you to go from Tucson to Phoenix and back again? How many hours?

A. Well, you mean into Phoenix proper?

Q. No, from the time you left Tucson to go to Phoenix and come back, how many hours?

(Testimony of Kenneth L. Van Horn.)

A. You mean to Phoenix proper or to some of our drops?

Q. You testified, I believe, that you went to Blakely No. 1. A. Yes.

Q. Where is that located?

A. That is at 19th and Buckeye Road.

Q. How many hours did it take to make that trip?

A. I would say on an average it should take eight hours.

Q. That means you would have left at 10:00 o'clock in the morning to go to Phoenix and get back at 6:00 p.m. that night?

A. It would take eight hours to make the loop.

Q. Now, you say that you are back employed by Texas Independent Oil Company?

A. Yes, sir.

Q. And I was a little bit confused about the fact that you came to Tucson and then went to El Paso and then had gone back to Tucson. Now, was that Mr. Quisenberry's fault?

A. Fault, speaking of what?

Q. Of the fact that there was a mix-up and another truck came [128] on?

A. No, it was no fault of his whatsoever. I don't guess, anyway. I mean I took it that his intentions were right, what he told me.

Q. At any rate, you were satisfied with your re-employment? A. Yes.

Q. And he did pay you for the trip of coming

(Testimony of Kenneth L. Van Horn.)

from Tucson to El Paso and back because there was a mix-up?

A. He said he would do so, yes.

Q. Let me ask you this, have you changed your story any from the time you were discharged up until the time you were re-employed as to any matters in connection with the union?

A. No, it was quite understood that when I went to work, I quite understood why I got fired and quite understood when he hired me back.

Q. And so far as you know, you made no definite statements to him when you were rehired that were different from the first time you were employed?

A. I did tell him, "At least the next time I will keep my mouth shut." [129]

* * * * *

LLOYD HINDS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [131]

Direct Examination

Trial Examiner Doyle: Will you please give us your name and address please?

The Witness: Lloyd Hinds, El Paso, Texas, Barker Road 7262.

Q. (By Mr. Schoolfield): Mr. Hinds, what is your occupation; what do you do for a living?

A. I'm a truck driver.

Q. When did you first meet Mr. Quisenberry?

(Testimony of Lloyd Hinds.)

A. Oh, about March 20th or 22nd, somewhere along there.

Q. And where did you happen to meet him?

A. At the unemployment office.

Q. And what did he say to you in the unemployment office?

A. He said—he asked me if I was working and I told him that I wasn't. I said right at the present time the union doesn't have anything for me. I am down here to draw my unemployment compensation.

Q. What did he say to you then?

A. He said, "Well, I am starting up a tank line on this end and you are the first driver I have talked to." He said, "Now, this job is going to be non-union." He said, "But I am paying union scale or maybe more. If the union goes up their scale, I will go up with mine."

Q. What did you say to him then?

A. I said, "Well, that is a good deal as long as I get a good paying job out of it, because I am here for employment compensation." [132]

Q. Did you go to work for the Texas Independent Oil Company then? A. No, sir.

Q. Did you wait around for a job at that time and expect a job from Mr. Quisenberry at this time?

A. Mr. Quisenberry told me he had to go to El Paso and he said he would be back Friday or Saturday night. He said he was going to meet Mr. Steele down there and talk with him and he would

(Testimony of Lloyd Hinds.)

let me know about it when he came back to Tucson.

Q. What did you do then?

A. I gave him my phone number, but he didn't call me. He told me he lost it, afterwards. He never called me I didn't have nothing to do so I was out at the house one day and they called me up from the Union Hall and said this Merrill Kembrey that hauls dynamite, he said he was calling from Benson and needed a driver.

Q. So you went to work for somebody else at that time? A. Yes, sir.

Q. Now, when did you next contact Mr. Quisenberry?

A. Well, I went to work down there the 7th of April for Kenbrey and I hauled about three loads of dynamite and I stopped out here at the 66 Truck Stop one day, filled up, and I asked him, "Do you ever see any of the Texas Independent Oil trucks through here?" And he said, "Yes, they are supposed to start servicing in here." That is what they told me out there. I said, [133] "Do you happen to have his telephone number or his address? I have been out trying to find his place and I knew it was out somewhere on East 10th Street but I had forgotten just where." So that fellow gave me his address and his phone number, so I called him up and he wasn't there. His wife was there. So she said that she would have him call me. So I said, "Well, I am in Benson and he can meet me or find me down there under the underpass there at Benson, Arizona, where our head-

(Testimony of Lloyd Hinds.)

quarters was with the dynamite trucks." So I kept working there and I got laid off. Well, I quit. And it was because there was not enough money in it for hauling dynamite. So I went to Lordsburg to look for work down there. And one day I was in there and Mr. Quisenberry came in there and I had another truck driver with me, Buckshot Keith.

Q. Buckshot Keith was with you?

A. Yes.

Q. All right.

A. And I asked him again, "Do you have an opening for me?"

Mr. Langmade: I see no relevancy of this up until the time he came in to actually get the job.

Trial Examiner Doyle: I expect we are going to get to the point where he is hired and goes to work here in a moment. Now, General Counsel, will you get to that as quickly as you can?

Q. (By Mr. Schoolfield): Now, where were you when you and Buckshot saw Mr. Quisenberry?

A. Lordsburg.

Q. What place, a tavern or where?

A. Well, I saw him in a tavern, yes.

Q. What did Mr. Quisenberry say then?

A. He said, "If you boys think you can hold down here for another week or ten days, I am pretty sure I will have a truck down here for you." He said, "I am supposed to get three or four new ones."

Q. Did he say anything about the union at that time?

(Testimony of Lloyd Hinds.)

A. Well, he said—while I was in there in the bar, two more boys came in, I don't know who they were.

Q. All right.

A. And they asked Mr. Quisenberry, they said, "Are you Mr. Quisenberry?" And he said that he was. He said, "I understand you are looking for drivers." He said, "I am, I am going to need several drivers in the next few days." But he said that it was a non-union job, and he said, "I am not going to hire any union drivers."

Q. All right.

A. So he said, "I am going to El Paso and I will be back in here in the next day or two."

Mr. Langmade: Was he talking to you or someone else?

The Witness: He was talking to some of the other boys in front of me and Buckshot Keith.

Mr. Langmade: I move that that be stricken.

Trial Examiner Doyle: Just a moment, as I got the inference of your testimony, all five of you were there together?

The Witness: Yes, sir.

Trial Examiner Doyle: Is that right, Mr. Quisenberry and you and Keith and these other two strangers?

The Witness: Yes, sir.

Trial Examiner Doyle: You were all talking there in a group?

The Witness: Yes, sir.

(Testimony of Lloyd Hinds.)

Trial Examiner Doyle: I will overrule the objection.

Q. (By Mr. Schoolfield): And that was all that Mr. Quisenberry said at that time?

A. He said, "I will see you boys in here about 8:00 o'clock."

Q. He said no more about the union?

A. That is right.

Q. Mr. Hinds, when did you finally go to work for Independent Oil?

A. The 6th of last month.

Q. The 6th of September? A. Yes, sir.

Q. How did you happen to go to work for them then? Will you tell the Examiner how that came about?

A. Well, I went to work for Whitfield and I worked down there until they laid me off. They had too many drivers and not enough business. So my last load for Whitfield was on Friday evening, [136] so I was going to dump it Saturday morning. Well, I was down there Friday afternoon when they got out down there, and Sam was there and I told him that was my last trip and Sam says, "Slim Quisenberry is needing some drivers." So I called him up that night and he said, "I have a job for you now; you called me just right."

Q. So he hired you, is that right?

A. Yes. He said, "I will have a job for you Monday evening." He said, "Would you be willing to move to El Paso," and I said, "I will."

Q. So you moved to El Paso? A. Yes.

(Testimony of Lloyd Hinds.)

Q. And when did you finally go to work for him? A. That was the 6th of last month.

Q. You finally went to work the 6th of last month? A. I pulled my first trip.

Q. Did you have a conversation with Mr. Quisenberry on or around September 19th in which the union was discussed?

A. Well, we was out at the refinery one afternoon. I was getting ready to take off. It was just before dark and we were sitting around the truck looking at a tag.

Q. Something was wrong with the truck?

A. It had been fixed but we were just checking it and talking about it.

Q. What did Mr. Quisenberry say to you? [137]

A. He said, "This company could really be a really good outfit if everybody is co-operative and it is run right." He said, "Of course, the Old Man don't want it union and he said that we are going to keep it non-union." He said, "I am going to see that it is kept non-union." And he said, "How do you feel about it?" I said, "Slim, I am either way. If it stays non-union and I need a job, I will work. If it goes union, I will join up again and work that way through the union."

Q. Did he say anything about it being non-union to keep your job?

A. He said, "Mr. Steele don't want this job union. He said if he had to, just because he bought these four new trucks, don't think he won't park them and get Whitfield to do the hauling or get it

(Testimony of Lloyd Hinds.)

hailed up by tank cars, because he is not going to go union. He don't want it to go union," I think that is what he said.

Q. Did he say anything else to you at that time? A. No, I don't believe he did. [138]

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Mr. Langmade: Mr. Examiner, may I ask a question on the voir dire to perhaps shorten this?

Trial Examiner Doyle: Yes, I think so, go ahead.

Mr. Langmade: Have you ever been discharged?

The Witness: Not that I know of. [141]

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SIDNEY W. BAILEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Give us your name and address, please.

The Witness: Sidney William Bailey, 2218 West Hermosa Drive, [150] San Antonio, Texas.

Q. (By Mr. Schoolfield): Now, Mr. Bailey, will you tell the Examiner when you went to work for Texas Independent Oil Company?

A. Referring to my log book, I went to work on the fifth month, the 25th day of 1953.

Q. That is May 25, 1953?

A. At 8:00 p.m.

Q. Did you make out an application for employment? A. Yes, I did.

(Testimony of Sidney W. Bailey.)

Q. Who did you fill this out in front of, do you recall?

A. I filled it out in front of Mr. Nutter.

Q. Were you told when you applied for employment—

Mr. Langmade: I object.

Mr. Schoolfield: All right.

Q. (By Mr. Schoolfield): Mr. Bailey, I will hand you a document which I will first ask the reporter to mark as General Counsel's Exhibit No. 2, a paper application for employment, and hand General Counsel's Exhibit No. 2 for identification to the witness and ask him if that is the application form he filled out at the time. Is that your writing?

A. It definitely is.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2, for identification.)

Q. Now, will you look down here at the bottom of the page and [151] notice where you put—what is this down here at the bottom where it says, "Activities Other Than Religious (Civic, Athletic, Fraternal, etc.)"?

A. Teamsters Local, et cetera.

Q. Will you tell the Examiner how come you put that in there at that time?

A. That paper was passed from Mr. Nutter to Slim Quisenberry, or M. A. Quisenberry, and it did not have anything on the bottom. Mr. Quisenberry asked me what organizations I belonged to, if I belonged to a union.

(Testimony of Sidney W. Bailey.)

Q. He asked you that? A. Yes, sir.

Q. And what did you tell him?

A. I told him that I had a union book, yes, but my dues weren't paid up to date.

Q. Now, did you write in the bottom here what I have just read, or did someone else?

A. Mr. Quisenberry handed it back to me and asked me if I would put it in there, which I did, and handed it back to him.

Q. And he asked you whether or not you belonged to a union organization?

A. That is right.

Q. Did you have any other union discussion with Mr. Quisenberry before your discharge?

A. At that same time that we were discussing this employment [152] sheet that you have there, he definitely told me that he did not want it union and I said, "Well, I belong to the union but I won't cause you any trouble," in which I never have up until I signed a complaint against them after I was fired. [153]

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ALFRED JENSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Give us your name and address, please, and speak up good and loud. Mr. Jenson.

(Testimony of Alfred Jenson.)

The Witness: Alfred Jenson, 850 Calleantonia.

Q. (By Mr. Schoolfield): All right, Mr. Jenson, where are you employed?

A. Texas Independent Oil Company.

Q. How long have you been so employed?

A. Since the 16th day of April, 1953.

Q. All right. Did you ever have a conversation with Mr. Quisenberry in which Mr. John Cox was present?

A. Yes, sir.

Q. Will you tell the Examiner what was said at that time and when it was.

Trial Examiner Doyle: Let's us fix the date first so we can have that straight. Let us fix the date as to the best of your recollection, and then we will get the conversation.

Q. (By Mr. Schoolfield): When did you have the conversation?

A. Is that in regard to Johnny Cox's hiring on the job?

Q. That is correct.

A. Well, it was in Lordsburg, New Mexico, on approximately the [165] 17th or 18th of April.

Q. 1953? A. Yes, sir.

Trial Examiner Doyle: You place it a couple of days after you went to work, is that it?

The Witness: Oh, wait, it was more than that. It was possibly the 20th. I think I called him one day and he came down the next.

Q. (By Mr. Schoolfield): You called who?

A. Johnny Cox.

Q. And he came down the next day?

(Testimony of Alfred Jenson.)

A. Yes, sir.

Q. And you were already working?

A. Yes, sir.

Q. Did you introduce Mr. Cox to Quisenberry at that time?

A. No, sir, Johnny Cox was in Phoenix.

Q. And were you present when Johnny Cox and Quisenberry and yourself were all together at one time?

A. Yes, sir.

Q. And what did Mr. Quisenberry say to Mr. Cox then?

A. Well, I introduced him to Mr. Cox and they went on talking from there and he asked Johnny, which I had told Johnny to say that he wasn't in the union, because Johnny is a good man and I wanted him to have the job. So I knew Johnny wouldn't hurt the job. So he told Mr. Quisenberry that he was not in the union, [166] that he had went delinquent in '47.

Q. I see. You had a conversation with Mr. Quisenberry about John Cox before that, hadn't you?

A. Yes, sir.

Q. What did Mr. Quisenberry ask you about Cox at that time?

A. He asked me if he was in the union and I told him no, that he had went delinquent in '47.

Q. I see. Now, do you remember a conversation in which Mr. William Turner, William Johnson and yourself, and Mr. Quisenberry entered into a conversation?

A. Yes, sir.

(Testimony of Alfred Jenson.)

Q. Will you tell the Examiner approximately when that was.

A. Well, about the 25th of April we was out at Truck 66 and Bill Turner and Bill Johnson come out to the truck stop and Bill Turner introduced Bill Johnson to Quisenberry there and we was standing out at the corner of the building when we were discussing the job. Slim Quisenberry told Johnson that—asked him if he was in the union and Johnson said, “Yes” he had been working for Cantlay & Tansola and he said, “Well, that is all right, just so long as there is no trouble,” that he didn’t want the union and it wouldn’t be union, and he didn’t want it and as long as it didn’t cause no trouble, it would be all right.

Q. Is that all you remember of that conversation at that time about the union?

A. Well, yes, that is about all that was said about the union. [167]

Q. Now, Mr. Jenson, when you hired in, did Mr. Quisenberry question you about the union?

A. Yes.

Q. Will you tell us when that was?

A. It was about April 12 and I went out to Bill Turner’s and Mr. Quisenberry was at Turner’s house, out in front of the house talking to Bill Turner. So I just stood there for a little while and listened and finally I got in the conversation, and Mr. Quisenberry asked me if I was a truck driver, in which I just made the remark saying I had been paid for years doing that job, and he asked me if

(Testimony of Alfred Jensen.)

I would like a job, and I said that I would like time to talk it over, think it over and talk to Turner about it. So he said, "All right." He said that the truck was No. 9 and it was parked back of his house, and we went over and looked at it.

Q. Did he ask you if you were in the union at that time?

A. I told him I joined in 1935. He said, "I don't want any union members" so I said that I was delinquent three years ago and I wasn't in the union.

Q. And you were hired, is that correct?

A. Not right at the moment, no, sir.

Q. When did you go to work?

A. The 16th day of April. [168]

* * * * *

WILLIAM E. TURNER

a witness called by and on behalf of the General Counsel, having been first duly sworn, was examined and testified as follows: [178]

Direct Examination

Trial Examiner Doyle: Give us your name and address and speak up real loud.

The Witness: William E. Turner, 11935, Guard Avenue, Norwalk, California.

Q. (By Mr. Schoolfield): Mr. Turner, were you employed prior to May 1, 1953, with the Texas Independent Oil Company? A. Yes, sir.

Q. How long did you work for the company?

A. Oh, from April 13 to May—it was about 30 days.

(Testimony of William E. Turner.)

Q. You worked about 30 days?

A. About 30 days.

Q. Mr. Turner, would you tell the Examiner whether or not you road tested Mr. Richins?

A. Yes, I did.

Q. Mr. Turner, how long have you been driving a truck? A. Well, about eight years.

Q. You have been driving diesels during that time? A. Most all of it has been diesels.

Q. You have had eight years of diesels?

A. Yes, sir.

Q. And you road tested Mr. Richins?

A. Yes.

Q. Would you tell the Examiner what type of driver Mr. Richins was?

A. He surprised me not to have much more trucking experience [179] than he said he had and he was very good with the gears. It was over terrain where you had to use gears quite a bit and he was exceptional.

Q. Did Mr. Richins at all manhandle gears?

A. No, he was very smooth with the gears.

Q. When did you first talk with Mr. Quisenberry about a job, Mr. Turner?

A. April 13, 1953. It may have been a little before that. I think it was a day or two before.

Q. Did he ask you about the union at that time?

A. Well, he asked me if I belonged to the union.

Q. What did you tell him.

A. I told him yes, I did.

(Testimony of William E. Turner.)

Q. Now, did he go any further in union discussion with you at that time?

A. Well, this was over the phone. He said he didn't want any union drivers, and I told him that he didn't want me then. He said to come over to his house and talk to him anyway.

Q. Now, did you discuss union drivers with Mr. Quisenberry after that during your employment?

A. Well, he asked me to get drivers that weren't union if I could, but I told him this part of the country you can't always find them. And he said, "Well, just looks like we will have to get men who are union. We have to have drivers."

Q. Did you talk to Mr. Quisenberry about a job for William [180] Johnson? A. Yes, I did.

Q. Were you present when Mr. Quisenberry talked to Johnson? A. Yes.

Q. What did Mr. Quisenberry say?

A. Well, he asked Mr. Johnson where he had worked and Johnson told him in Cantlay & Tansola, and asked him if he was union and he said he had to be to work for Cantlay & Tansola. And he said, "Well," the exact words, "you can go to work but just quit paying dues on that card."

Q. And that is just about what he said to Mr. Johnson? A. That is what he said.

Q. Was anyone else present at that time besides Johnson?

A. Al Jenson was present at that time.

Mr. Schoolfield: I pass the witness.

(Testimony of William E. Turner.)

Cross Examination

Q. (By Mr. Langmade): Mr. Turner, you were actually the first employee that was hired by Mr. Quisenberry, were you not?

A. In Tucson, yes.

Q. That was when the operation began?

A. Yes, that was when the operation began.

Q. And you say that he hired you notwithstanding the fact that you had said, "Well, then, if you don't want union men, you don't want me"?

A. He didn't hire me then. He hired me later, later that [181] same day.

Q. Later that same day; you were still the first employee to go to work on this new operation or new unit that was being set up and that is set forth in the complaint here? A. Yes, sir.

Q. And you worked with the Texas Independent Oil Company until when?

A. Around the 1st of May, sometime, right around the 1st of May.

Q. Then you resigned of your own volition?

A. Yes, I did.

Q. Not because of any union activity or non-union activity? In other words, that wasn't the reason why you quit.

Mr. Schoolfield: Mr. Turner is not in the complaint as an 8 (3).

Q. (By Mr. Langmade): Your answer was no?

A. No; yes.

Q. Now, you say you road tested Mr. Richins. How many times did you road test Mr. Richins?

(Testimony of William E. Turner.)

A. I road tested Mr. Richins one time.

Q. I believe you testified he hadn't any experience in driving this heavy type of equipment?

A. This type of equipment.

Q. Now, will you say that one test drive is sufficient in your opinion to fully qualify him to know how to shift gears? [182]

A. Well, under the circumstances, yes, because he was so good with the gears. So many people are just naturally born to this and some people never get it. [183]

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ROBERT G. DAYTON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you give us your full name and address, please?

The Witness: Robert G. Dayton, 2438 North Estrella Avenue, Tucson.

Trial Examiner Doyle: All right, Mr. Dayton, will you answer the questions of counsel, and keep your voice up.

Q. (By Mr. Schoolfield): Mr. Dayton, where are you employed?

A. Texas Independent Oil Company.

Q. When did you go to work for the company?

A. May 15, 1953.

Q. What are your duties?

(Testimony of Robert G. Dayton.)

A. Driving a truck.

Q. The same type of truck as the rest of the witnesses? A. Yes, sir.

Q. When did you first contact Mr. Quisenberry about a job, Mr. Dayton? [189]

A. I believe it was the 12th or 13th of May.

Q. Do you recall what Mr. Quisenberry said to you at that time?

A. Yes, I saw Mr. Quisenberry at the 84 Truck Stop and he got in the car with me and I asked him for a job and he asked me if I belonged to the union. I told him no, that I was delinquent and I guess I had been dropped.

Q. What else did Mr. Quisenberry tell you at that time?

A. He told me that he was running a strictly non-union job and he wanted no one that belonged to the union.

Q. Did Mr. Quisenberry say anything at that time about discharging men who did belong to the union? A. Yes.

Q. Would you repeat that conversation, please?

A. Well, he said that he was running a non-union job and if anyone of these boys joined up with the union, well—I can't repeat it verbatim—but he said he would discharge them.

Q. Was the gist of this conversation repeated anytime thereafter? A. Essentially, yes.

Q. When was this?

A. Well, on occasions, I can't give dates because there were several different occasions.

(Testimony of Robert G. Dayton.)

Q. Now, the first conversation was around May 11th, you testified, is that correct, sir? [190]

A. 11th or 12th, somewhere along there.

Q. And when did you go to work for the company? A. May 15th.

Q. Did you have a conversation with Mr. Quisenberry on May 15th? A. Yes.

Q. Would you repeat that conversation?

A. I was at his house and he asked me again if I wanted to go to work, and I called him up and said I was ready to go to work, and he said I could go to work. And he asked me to fill out an application form, and some of the fellows came in and he reiterated he wasn't hiring any union help, he wasn't going to have them on the job, and if they were, they didn't need to apply.

Q. Now, Mr. Dayton, were you ever told by Mr. Quisenberry not to turn in your tach charts?

A. Several times.

Q. Now, do you recall on any particular truck?

A. Yes, on No. 3.

Q. When were you told on No. 3, can you recall?

A. I believe it was in front of the 84 Truck Stop, around the fuel pumps there.

Q. What time of the year, do you recall?

A. Well, it was, I believe, in May, the latter part, possibly.

Q. Now, what was the next truck? [191]

A. Well, I am not giving you the trucks in order.

Q. That is all right.

(Testimony of Robert G. Dayton.)

A. No. 9 and No. 7, I do believe.

Q. And were you told substantially the same thing on each one of these trucks, is that correct?

A. He told me, well, his phrasing was, "Get rid of that damn tach chart."

Q. I see. Now, do you recall a conversation with Mr. Quisenberry on or about September 8?

A. Yes.

Q. Would you tell the Examiner how this conversation came about?

A. I got in late that morning and Mr. Nutter called me up and told me to be over at the 84 Truck Stop, that I had to call Mr. Quisenberry just as soon as possible. I hurried over there and he said, "Well, I want to talk to Al Jenson, too," and I said, "O. K., I will wait until Al gets here and we will make one call." I don't recall who placed the call, but anyhow I called Mr. Quisenberry first and he told me, "I want you to lay off for a few days."

Q. What did you say?

A. I asked him if there was any particular reason, that I couldn't afford to lay off.

Q. Go on.

A. I said you must have a reason. He said, "Yes, it is about [192] those applications you have been passing around and those tach cards." I said, "I have told you about all tach cards. Now, what applications are these?" He said, "Well, those applications you have been passing around." I suppose he meant the union applications because I gave one

(Testimony of Robert G. Dayton.)

of the other drivers an application when he asked for it.

Q. Did you have a telephone conversation with Mr. Quisenberry around the 10th of September?

A. Yes, he called me at my home at about noon, perhaps a little after, and asked me if I would contact the rest of the men that had been laid off that worked on the other end of the job. He said, "Get them all," to call them over to the 84 Truck Stop, that he wanted to talk to everyone of them. I asked him what was up and he said, "Well, we are going back to work just the same as we have been." And I said, "Does that mean everybody?" And he said, "Yes, could you get ahold of Chester Johnson?" And I said, "Yes." He asked me about Jenson and Saner, and I told him I would see that they was got ahold of.

Q. What else did you say to Mr. Quisenberry?

A. I asked him what was wrong, and he said it was this damn union deal. I said, "Oh, that is what has been bothering you." I said, "How come you laid us all off?" He said, "Well, I got some bum information from a damn lawyer," or something like that.

Trial Examiner Doyle: I didn't get that? [193]

The Witness: He said something like, "I got some bum information from a damn lawyer," or something like that. That was the general tone of it.

Q. Did you have any more conversations with him at any time?

(Testimony of Robert G. Dayton.)

A. Not that I can recall. That was essentially the most of it.

Q. Did you have a conversation with Mr. Quisenberry about Mr. Steele?

A. Well, I have had several conversations with him about Mr. Steele.

Q. About when was it you had one of these conversations?

A. I couldn't give any definite dates as to when. There were times when he said the Old Man wasn't going to have this a union job and the Old Man said this and the Old Man said that. I asked him one time what Mr. Steele looked like and he told me. He said he is a hard headed old son of a bitch and he is not going to have this a union job, and he said if he has to go, he will jack these trucks up and let them sit.

Q. Did you have a conversation with Mr. Quisenberry in which he explained the reason for Mr. Steele's attitude?

A. Well, yes, I do remember something like that.

Q. Can you place the approximate time of the month when this conversation took place?

A. No, because we had several conversations. We all met at one place and visited and talked, and as for time and dates, I [194] couldn't tell you, but I asked him one time particularly why——

Mr. Langmade: Just a minute, I believe I am going to object unless he gives us the approximate dates.

Trial Examiner Doyle: Yes, I think that is true,

(Testimony of Robert G. Dayton.)

and there is another point on this, too. I don't think we ever had it clear in this record what Mr. Steele had to do with this company. There has been reference to "The Old Man" and to Mr. Steele, but if he is not an official of the company or an owner or backer or something, of the company, this stuff is irrelevant. We ought to have it clearly stated here as to what Mr. Steele has to do with the company.

Mr. Schoolfield: Can we stipulate Mr. Steele owns the company?

Mr. Langmade: No, it is a corporation.

Mr. Schoolfield: Can we stipulate he is a stockholder?

Mr. Langmade: He is a stockholder, yes.

Mr. Schoolfield: Let us go off the record, please.

Trial Examiner Doyle: Off the record.

(Discussion off the record.)

Trial Examiner Doyle: On the record.

Mr. Schoolfield: General Counsel solicits a stipulation to the effect that Horace Steele is vice president of the Texas Independent Oil Company.

Mr. Langmade: It is so stipulated.

Trial Examiner Doyle: And he is also referred to as "The [195] Old Man," "Old Man Steele," or some expression such as that.

All right, now let us get the approximate date of these conversations. I either suggest the witness to connect them up with prior to his discharge or at the time he began, or something of that sort.

Q. (By Mr. Schoolfield): Mr. Dayton, can you

(Testimony of Robert G. Dayton.)

give us the approximate time of the year when you had the conversation about Mr. Steele?

A. Well, I could give you any date, possibly from May 15 until May 30.

Q. In that period there?

A. In that period, sometime along there.

Q. And would you repeat the conversation about Mr. Steele?

A. Well, he said Mr. Steele was a hard headed old gentleman, and that he wasn't going to have this union regardless. If he had to, he would jack these trucks up and leave them sit.

If I may add, he repated that on another occasion.

Q. Do you recall when that was?

A. Yes, that was during the telephone conversation of approximately September 8th to the 12th.

Q. You mean which conversation, the conversation on the 8th or your conversation on the 10th?

A. On the 10th.

Q. Your conversation on the 10th?

A. On the 10th. No, I beg your pardon, that would have been [196] the conversation on the 11th.

Q. You had a conversation with him on the 11th, too? A. Yes.

Q. Then you testified you had a telephone conversation with Mr. Quisenberry on the 8th, the 10th and the 11th? A. That is right.

Q. Would you repeat the conversation of the 11th?

A. I called Mr. Quisenberry and asked him

(Testimony of Robert G. Dayton.)

where the truck was. As yet I had no information, no concrete information that I was back on the payroll, and he told me so. He said, "Yes, your truck is laid up." I said, "Well, what in the world is going on? You tell me we are on the payroll, but no truck shows up. Can you tell me what has happened?" He said, "Well, it is over this damn union deal." He says just because the Old Man spent, well, he says, just because the Old Man spent \$30,000 apiece for these trucks, or something like that, don't think that he is going to let this go union, he will jack them up and take the tires off them and let them sit if he has to. [197]

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MERRILL E. NUTTER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [202]

Direct Examination

Trial Examiner Doyle: Will you have a chair, please, and give us your name and address?

The Witness: M. E. Nutter, 430 East Lee, Tucson.

Q. (By Mr. Schoolfield): Where are you employed, Mr. Nutter?

A. Texas Independent Oil Company.

Q. What are your duties?

A. I drive a transport.

Q. When did you first go to work for the Texas Independent?

(Testimony of Merrill E. Nutter.)

A. I don't recall the exact date that I went to work. It was the fore part of May that I actually went to work and the latter part of April that I took my student run.

Q. Did you have a conversation with Mr. Quisenberry when you took your student run, or before?

A. I don't recall that I had one the day that I took my student run. I did prior to that.

Q. Would you tell the Examiner what Mr. Quisenberry said to you then?

A. It was explained to me that he was running a non-union job and asked if I belonged to a union and I told him no, I had never belonged to a union. And I believe that aside from the fact that he stated he wanted to keep it a non-union job, that consisted of the conversation.

Q. Did he say anything more about the union at that time?

A. As I recall it, no. [203]

Q. Did he say anything about hiring and firing men at that time?

A. I don't recall that he did right at that time, no.

Q. Did he say anything to you later about hiring and firing men? A. Yes.

Q. When was this?

A. Somewhere, I would say either the latter part of May or the fore part of June, in a conversation that we had it was stated by Mr. Quisenberry that you could not fire a man for union activities,

(Testimony of Merrill E. Nutter.)

but there were numerous other reasons that he could be discharged for.

Q. Was that the extent of his conversation at that time?

A. To the best of my knowledge, yes, as far as the union was concerned. We may have talked of other things, but as far as the union was concerned, yes.

Q. Now, Mr. Nutter, aside from your duties as truck driver, did you have any other capacity or do you have any other capacity with the company?

A. That is the \$64 question. Just now, I don't know. I guess I am just a driver.

Q. Did you ever take application blanks from other drivers, Mr. Nutter?

A. I have yes.

Q. Will you tell the Examiner your instructions from Mr. [204] Quisenberry as to the method of taking these application blanks and how you were supposed to instruct the men in dealing with them and filling them out?

A. When I first started taking applications, all of the applications were filled out as to the name and address, education, where they had worked prior to here and who their former employers were, and so forth, sir. Later on I was instructed, on the front side of the sheet, as I recall it, the bottom line, asked what organization they belonged to other than fraternal, religious, and so forth, and I was instructed to ask the men if they had ever belonged

(Testimony of Merrill E. Nutter.)

to a union, and if so, say so, and if they were on a withdrawal card, they wanted that, too.

Q. And they wanted that affirmatively stated?

Mr. Langmade: Wait just a minute here, I object to the statement "They wanted."

A. By "They," Mr. Quisenberry or the company.

Mr. Langmade: Did you have a conversation with——

Trial Examiner Doyle: Just a minute. The objection is sound here now. I understand the instructions were given by somebody, but who gave the instructions to proceed that way?

The Witness: That is easy to answer. It was Mr. Quisenberry.

Trial Examiner Doyle: Now, one thing I am not clear about, too, when you were asked to do this, was it because you had some [205] sort of supervisory function there, or were you some sort of a straw boss or personnel man?

The Witness: Yes, I think that is right.

Trial Examiner Doyle: In addition to your truck driving duties?

The Witness: It is kind of a mixed-up situation.

Trial Examiner Doyle: That is what we want to have.

The Witness: I guess you could call me a straw boss. At one time I guess I had the authority to take applications, and I was told at one time I even had the authority to hire and fire.

Trial Examiner Doyle: And it was during the

(Testimony of Merrill E. Nutter.)

time that you had such authority that one of your functions was to see about these applications?

The Witness: That is right.

Q. (By Mr. Schoolfield): Now, Mr. Nutter, when was this authority taken away from you?

A. It was taken away, I don't know exactly what time. It was the latter part of May or the fore part of June that I was working at this and it was kind of haphazard-like. Once I was relieved of those duties and went back to driving, and then I was replaced.

Q. When were you replaced, do you recall?

A. I don't recall the exact date. It was in the middle of the summertime.

Q. Do you have that authority now? [206]

A. Awhile ago I said that it was the \$64 question. I believe it was on the 7th day of September that authority was given back to me and has never been taken away from me, but I don't feel that I still have it. [207]

* * * * *

Q. (By Mr. Schoolfield): Mr. Nutter, do you recall a conversation with Mr. Quisenberry about the union activities of the other drivers?

A. Only one man that I recall now, possibly two.

Q. Can you recall approximately when these took place with the first man?

A. I think it was the latter part of May and the man we were discussing—would you be interested in who we were discussing?

Q. Yes.

(Testimony of Merrill E. Nutter.)

A. The man we were discussing at that time was Al Jenson. [212]

Q. What did Mr. Quisenberry ask you then or say to you then? Do you recall his approximate words?

A. I believe that he asked me this way, did I know that Al was a member of the union.

Q. And what was your answer?

A. I told him, "No," that I did not know.

Q. Now, who was the second man?

A. I believe the second man that we talked about, as far as the union was concerned, as I recall, I believe this man's name was Bill Richins from Lordsburg.

Q. Richins? A. Yes, that was it.

Q. Did that man testify in this court room yesterday? A. Yes, sir.

Q. And his name was Richins?

A. It is a name similar to—it is Richins or Richards.

Q. Did that man testify yesterday?

A. He did.

Q. Now, when did this take place, if you recall?

A. I believe that was in the latter part of May or the fore part of June.

Q. Now, what did Mr. Quisenberry say to you then? A. Well—

Mr. Langmade: Just a minute, I object because the record shows that Mr. Richins was discharged on May 25th. [213]

Mr. Schoolfield: This witness has testified as

(Testimony of Merrill E. Nutter.)

near as his recollection, the latter part of May or the early part of June, and that would take in a reasonable amount of time. It could have been before discharging Mr. Richins.

Trial Examiner Doyle: I will overrule the objection. Let us hear what was said. If it developed it was later after his discharge, I will entertain a motion to strike.

Q. (By Mr. Schoolfield): What was said?

A. I was asked if I knew that this man was a member of the labor union or was agitating in any way.

Q. And what did you say to that?

A. I said that I was afraid that he did belong to the union, was my answer.

Q. You were afraid that he did belong?

A. Yes, sir. [214]

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M. A. QUISENBERRY

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you please state your name and address?

The Witness: My name is M. A. Quisenberry, 3717 Pershing Drive, El Paso, Texas.

Trial Examiner Doyle: All right, Mr. Langmade.

Q. (By Mr. Langmade): Mr. Quisenberry, by whom are you employed?

A. Texas Independent Oil Company.

(Testimony of M. A. Quisenberry.)

Q. And what is Texas Independent Oil Company; is it a corporation, a partnership, or what?

A. It is a corporation.

Q. And are you generally familiar with the business of the Texas Independent Oil Company?

A. Yes, sir.

Q. And what business are they engaged in, generally speaking?

A. Distribution of petroleum products.

Q. And where are the petroleum products distributed?

A. In Arizona they are distributed in Tucson, Phoenix, Casa Grande, Bisbee.

A. And what points do they obtain for distribution in Arizona?

A. El Paso, Texas, Standard Oil Refinery.

Q. Any other points?

A. At Sypress, California, Standard Oil Company refinery.

Q. In California that is Standard Oil of California and here it is Standard of Texas?

A. That is right.

Q. Now, what is your capacity with the company?

A. Well, I am in charge of the trucks, I am in charge of seeing that the gasoline gets hauled to the points of distribution.

Q. From and to what points?

A. From El Paso, Texas, to any points in Arizona.

Q. And when were you employed?

(Testimony of M. A. Quisenberry.)

A. With Texas Independent Oil Company, I was employed about March 15th—16th, I guess.

Q. Of which year? A. 1953.

Q. And prior to that time, by whom had you been employed?

A. Alabama Freight Lines.

Q. What business is Alabama Freight Lines in?

A. Freight, interstate freight.

Q. How long had you been employed by them?

A. Well, the last time, three years.

Q. And what was your capacity with the Alabama Freight Lines?

A. I was the agent or manager of the Clarksdale terminal for the Verde Valley in northern Arizona.

Q. As such, did you have duties in managerial capacity? A. Yes.

Q. And did that include the hiring and firing of men? A. Yes.

Q. And is Alabama Freight Lines—their employees, are they all union? A. Yes, sir.

Q. And could you hire an employee for Alabama Freight Lines that was not a union man?

A. I had to ask him.

Q. And why was that?

A. Well, if he wasn't a union man, I couldn't hire him.

Q. And then I believe you state that it was March 15th that you were hired by Texas Independent Oil Company? [223] A. Yes, sir.

Q. And what were your duties to be?

(Testimony of M. A. Quisenberry.)

A. To operate the trucks, to see that the gasoline was distributed, to take care of the transportation part of the distribution of the petroleum products.

Q. From and between what points?

A. El Paso, Texas, and points in Arizona.

Q. Had there been any operation of Texas Independent Oil Company prior to the time you were employed in transporting gasoline between El Paso, Texas, and Arizona points? A. No, sir.

Q. And what did the company instruct you to do? In other words, after you were first employed, what did they instruct you to do?

A. Well, my first instructions were to go down to El Paso and make arrangements with Standard Refinery to start loading our trucks, and so forth, and see about places of getting fuel and contacting some drivers, and I was going to operate it from Tucson, to start with. We were just merely trying to see what was going to be the best way to operate and the best place to operate from when we first started this. And I have made a lot of changes.

Q. Just a minute now, was there anyone else helping you, or were you the sole charge and authority?

A. I was in sole charge and authority; nobody has helped me.

Q. And then you did proceed to set up this operation? [224] A. Yes, sir.

Q. And also to employ men; is that correct?

A. Yes, sir.

(Testimony of M. A. Quisenberry.)

Q. And there has been some testimony on application forms here; did you secure those application forms? A. Yes, sir.

Q. Where did you get them from?

A. I got them at a stationery store here in Tucson; I bought them.

Q. And was anyone directing you to get them or was that your idea? A. It was my idea.

Q. And then there has been testimony to the effect that you asked the men to fill out that application? A. Yes, sir.

Q. And also testimony to the effect that under, "Religious and Civic Organizations," that in addition thereto you requested the men to fill in their union affiliation if they had any.

A. I admit that charge, I did.

Q. And you did do that?

A. Yes, sir.

Q. And how long did you continue to do that?

A. Well, I don't remember the exact date, possibly it was around the 15th of June, around the 15th of June when you phoned me and told me that that was an unfair labor practice, cut [225] it out, don't do it.

Q. And from that time on, have you been requiring on applications that have been filed from men, for them to state their union membership?

A. No, sir, I haven't asked them that.

Q. Were you familiar with the National Labor Relations Act? A. No, sir.

Q. And prior to June 15, had anyone instructed

(Testimony of M. A. Quisenberry.)

you as to what you should do in hiring men or the questions you should ask them? A. No, sir.

Q. That was all done by yourself on your own authority as working for the Texas Independent Oil Company? A. That is right.

Q. Now, I believe, Mr. Quisenberry, that Paragraph 8 of the complaint states as follows:

“Respondent, through its offices, agents and employees, from on or about April 11, 1953, to date has interrogated its employees concerning their union affiliations; has threatened and warned its employees to refrain from assisting, becoming members of or remaining members of, the union; has kept under surveillance the meeting places, meetings and activities of the union or the concerted activities of its employees for the purpose of self-organization or improvement of working conditions * * *”

Now, in particular, I will ask you whether you have kept under surveillance the meeting places, meetings and activities [226] of the union?

A. No, sir, I never did.

Q. Did you know of any meetings that were being held? A. No, sir.

Q. Have you ever heard of any meetings being held? A. No, sir.

Q. Now, Mr. Quisenberry, with reference to the testimony of Harry Almada, you were here in the hearing room yesterday and heard his testimony?

A. Yes, sir.

Q. And Mr. Almada stated that on or about the

(Testimony of M. A. Quisenberry.)

11th day of April that you stated to him, and this was prior to the time that he went to work, that you were hiring nothing but non-union men, do you remember that conversation?

A. Yes, sir, I do.

Q. Was that the conversation?

A. I did say until we got all the trucks moved down here that we were going to move and get our new trucks in process and that I would rather it be non-union until we got into operation. I have said that several times, and now, I have said several times I don't care, it doesn't matter either way to me now.

Q. Since when have you been saying that it doesn't matter?

A. Oh, since about the middle of August. We don't have delivery on all of our trucks yet.

Q. I believe you also testified that you stated he should get [227] a withdrawal card at that same conversation on April the 11th. Do you recall any conversation to that effect? A. No, I don't.

Q. And also that you stated that you didn't want any trouble created?

A. I did say, "I want a smooth operation, I don't want any bickering back and forth until we get this thing going; I want it to be as smooth as possible because it is very confusing to start with, anyhow."

Q. And then you did employ Mr. Almada; is that correct? A. Yes, sir, I did.

Q. And he went to work for the company as

(Testimony of M. A. Quisenberry.)

a driver? A. Yes.

Q. And then on or about the 3rd day of June, 1953, he was dismissed; is that correct?

A. Yes, sir.

Q. And you heard his testimony yesterday that he had been told by you that tires should be bumped. Do you remember when and where you had that conversation with him? A. Yes.

Q. When and where was that?

A. The first time he ever drove one of our trucks I was riding with him.

Q. Do you remember about when that was?

A. It was the day I hired him. [228]

Q. That would be at the beginning of the operation around the middle of April?

A. That was the first truck I brought down from Phoenix to put on this highway.

Q. Now, you were in the truck riding with him?

A. We were going from Lordsburg to El Paso to pick up a load of gas.

Q. All right. What was the conversation?

A. The conversation, we were discussing back and forth—Harry knows quite a lot about trucks and I could tell that he had been around trucks practically all of his life, and we were discussing back and forth the merits and demerits of certain trucks, and I said, "I think the tires on these trucks should be bumped at least every 60 or 70 miles."

Q. What was his reply?

A. He said, "That is a good idea; I think that is what had better be done." So consequently all

(Testimony of M. A. Quisenberry.)

drivers bumped their tires. Of course, that is what all drivers do. When they first get on the truck that is what they all do.

Then the drivers were bumping the tires in El Paso and Deming and——

Q. Were you giving them any specific instructions as to what points they should be bumped?

A. Yes, I said Deming and the refinery and, of course, Lordsburg. [229]

Q. All right. You heard this testimony yesterday as to where he did bump these tires and where they finally found out it was smoking, and how many miles that was.

A. Yes, it was approximately 20 miles the other side of Deming when this tire burned out, and he didn't stop in Deming and bump his tires, so he had come approximately 80 miles.

Q. Did you see the tire? A. Yes, sir.

Q. You saw the tire after it was brought back. Where was it brought to?

A. I saw it lying beside the road. I was in El Paso at the time this happened, at the Paso Del Norte Hotel. I drove up there. As he was in the refinery, I drove up there. I saw the tire lying beside the road.

Q. Did you stop and look at it?

A. I sure did.

Q. What was the condition of the tire?

A. It was burned up.

Q. Now, Mr. Almada testified he was driving empty? A. That is right.

(Testimony of M. A. Quisenberry.)

Q. Now, from your experience with trucks, do you know how long it would take for a truck that was being driven empty on a dual tire to get in the condition that that tire was?

A. Approximately.

Q. What would that be. [230]

A. That tire would have to be flat for 35 miles, especially with it empty. Now, if it had been—now, on an empty trailer, pulling down the road in the cool of the early morning hours, he had to drive a long ways with that tire flat to burn it like that.

Q. Mr. Quisenberry, what is the cost of one of those pieces of equipment?

A. Around \$30,000.

Q. This is the truck, I take it, the whole truck and trailer? A. Yes, sir.

Trial Examiner Doyle: Cab and trailer?

The Witness: Yes, sir.

Q. (By Mr. Langmade): And in the event that tires aren't bumped, is it true what Mr. Almada said, that when you do stop, they will not catch fire when you are going but when you stop they will catch fire?

A. They will catch fire when they are running if you run them long enough.

Q. And is it also true that when you stop, that increases the likelihood of their catching fire?

A. It does, yes.

Q. Is that one or is it not of the more important things of a truck driver's duties.

A. That is one of the most important things,

(Testimony of M. A. Quisenberry.)

taking care of the equipment. That comes under taking care of the equipment. [231]

Q. And do you remember what date it was that that occurrence with Mr. Almada happened? To further refresh your memory, when was the next time you saw him after that happened?

A. I can't say when the next time was I saw him, I believe it was here in Tucson, but I fired him by telephone.

Q. Well, what time did you see the tire?

A. About 10:00 o'clock a.m.

Q. And then you did fire him on the same day?

A. On the same day.

Q. Then if the record disclosed that he was discharged on the 3rd day of June, would that be the day?

A. That would be the day, yes, sir.

Q. Then what did you do?

A. I came all the way to Tucson and I had already seen the tire, and I called Harry when I knew he had time to make his run and get his rest, and before the next truck went out, I called him and I said, "Harry, I am going to have to let you go because of that tire." And he said, "I take it I am fired for union activities?" And I said, "No, Harry, you are fired because you burned up a tire and left it lay beside the road because it was so damn hot you couldn't get it back on the tire rack."

Q. Did you ever talk to him after that?

A. Yes, I talked to him once after that here at Tucson out at the 84 Truck Stop. [232]

(Testimony of M. A. Quisenberry.)

Q. Did Mr. Almada recommend other employees to you? A. Yes, he did.

Q. And I believe he testified he recommended E. W. Richins and also Herschel Beeson; is that correct?

A. Now, I don't know whether he recommended Herschel or not, but he did recommend Bill Richins and Joe Delgado and Harry Paine to me.

Q. And did you employ those men?

A. Yes, I did.

Q. Was there anyone that he recommended to you that you didn't employ?

A. No, I don't think so. I thought a lot of his judgment on test hopping these drivers. I still do, for that matter. And the men he recommended to me had been good men.

Q. Mr. Almada also testified regarding your instructions on speeding. Now, do you remember having any conversation with him about the miles per hour the trucks were to travel? A. Yes, sir.

Q. When was that?

A. When I first brought those trucks down here.

Q. When was it, sir? A. Sir?

Q. Approximately when?

A. The first of April, approximately. [233]

Q. You had a conversation with him at that time?

A. Yes, sir, the first trip we were discussing speed.

Q. This is the same trip you are talking about

(Testimony of M. A. Quisenberry.)

in which you were in the cab of the truck with him?

A. Yes, sir, the first trip, the day I hired him. We were discussing speeds when I said that I thought 55 miles an hour would be a good speed for these trucks on the road. And he said he thought that was fast enough for a load of gasoline. And we discussed it back and forth and so we said 55 miles an hour would be the speed on the trucks.

Q. There was testimony that at one time you changed the base of operations from Tucson to El Paso; is that correct?

A. It is still that way, it is down in El Paso now. The base operations are in El Paso.

Q. And you moved the trucks from Tucson to El Paso; is that right? A. Yes, sir.

Q. And he testified that you said he exceeded the speed limit.

A. No, I went down with all the drivers that night with the exception of one. I had to hold up one truck because the fan was about to come off it.

Trial Examiner Doyle: Let us take a three-minute recess at this point.

(Short recess.)

Trial Examiner Doyle: All right, on the record. The hearing will be in order.

Q. (By Mr. Langmade): You were testifying, Mr. Quisenberry, about the time the fleet was moved, and you said, you came with them with the exception of one man.

A. Yes, I had to hold No. 5 that night. I didn't

(Testimony of M. A. Quisenberry.)

know that there was anything wrong with it and one of the boys, I believe it was Bob Dayton, was just checking the truck over before it went out and he was not going to go but he was helping the guys look the truck over and he happened to find the fan on No. 5 that was about to fall off. And it would have gone through the radiator. So I held it up to have it fixed the next morning. And I had sent Stewart Seymour on No. 15 and I took my car and caught him and brought him back and took No. 5 and put Bailey on No. 15. Now, when I moved this operation down there, I put pretty near all the drivers where they wanted to be, I gave pretty near all of them their choice of whether they wanted to pull from El Paso to here or from here to Phoenix, the older drivers, and No. 15 was running late that night, so I told Mr. Bailey that I would take the chart out of the truck so he could catch up with the rest of us. And he did catch up with the rest of us, the rest of the trucks. The other trucks were running 55 miles an hour and he was running approximately 60 or 65.

Q. What is the speed limit you now have in effect? A. Fifty miles an hour.

Q. Do you have good road conditions between El Paso and Arizona [235] points?

A. Some of the road conditions, we have some roads that are really good, and other stretches for a stretch of 15 miles is bad. It varies.

Q. Now, Mr. Quisenberry, with respect to William J. Johnson, you are acquainted with him?

(Testimony of M. A. Quisenberry.)

A. Yes, sir.

Q. He was one of your employees?

A. Yes, sir, he was.

Q. And did you ever discharge Mr. Johnson?

A. No, I didn't fire Bill.

Q. Did you have a conversation with him?

A. I had several conversations with him.

Q. Do you remember when he was employed?

A. The exact date, no, sir, I don't.

Q. Was it true he was with the company about 10 days to three weeks?

A. Approximately three weeks he worked for the company.

Q. And the record shows he was discharged on May 15, 1953; is that correct?

A. That is approximately the last time I saw him. He just didn't come back.

Q. And would you tell us of the conversations that you had with him?

A. Yes, when I hired him—— [236]

Q. When was that? That would be approximately three weeks prior to the time he failed to show up?

A. Yes, that would be approximately the 25th or 26th.

Q. Of April? A. Yes.

Q. What was that conversation?

A. I told him when I hired him that I would rather the job would stay non-union right now until we got all of our trucks moved down here and got the thing operating smoothly and got to pick out

(Testimony of M. A. Quisenberry.)

our drivers, and so forth, and he said, "All right, that is the way it will be," and that was the extent of the conversation.

Q. And when was the next conversation?

A. The day he left.

Q. And what was that? Where was it?

A. Well, we were discussing this union deal because I still didn't have all the trucks moved down here, I still had more trucks coming all the time, and the conversation was approximately the same as the first one. I said, "I want the guys to wait until we do get lined up and get started before we go into any negotiations with the union.

Q. What was his reply?

A. He said, "Well, I am a union man, Slim," and I said, "I don't blame you a bit, I am too."

Q. You have belonged to the Teamsters Union yourself? A. Yes, sir. [237]

Q. And then he never returned?

A. No, he never came back to work.

Q. Was there any conversation with these men and I will ask you to state specifically and not generally with reference to these men that were discharged, about their qualifications as to whether or not if they didn't prove out right that they would be discharged?

A. That is right, I mean everybody knows that when we are hired for a job, for approximately 30 to 40 days, they are on a probationary period; that is a standard rule.

Mr. Schoolfield: I will object, Mr. Examiner.

(Testimony of M. A. Quisenberry.)

Trial Examiner Doyle: Yes, I will sustain the objection. I will strike the answer as not being responsive. The question was, "What instructions were given to these men?", not what you think they may have understood or what you may have understood. Did you tell the men they were on a probationary period?

The Witness: Yes, I told them.

Q. (By Mr. Langmade): Now, with reference to Cox, Johnson, Richins, Almada or Bailey, do you remember any specific conversations with them?

A. Yes, I tell every employee that I hire that there is a 30-day probationary period, 30 to 40 days probationary period whereby I will find out whether he is going to get along with me and whether I am going to get along with him and whether he treats the trucks right or not. I tell all employees that. [238]

Q. Now, Mr. Quisenberry, with respect to E. W. Richins, are you acquainted with him?

A. Yes, sir.

Q. And I believe that he testified that it was April of 1953 that you employed him; is that correct?

A. Yes.

Q. And at the time you employed him, did you have a conversation with him?

A. Yes.

Q. And did you question him about his union affiliations?

A. I asked him whether or not he belonged to the union, yes.

Q. What was his reply?

(Testimony of M. A. Quisenberry.)

A. He said, "I have a withdrawal card."

Q. Did you have any conversation with him at that time that you were paying union scale in order to keep it non-union?

A. No, I said this: "The union contract negotiated with McNutt Oil Company from El Paso to points in Arizona gets five and a half cents a mile, or five and seven-eighths cents a mile and we are paying six cents a mile." That is what I said.

Q. Then he testified to another conversation that you had with him about he was going to vote, and that his testimony was more or less to the effect that you told him that——

Mr. Schoolfield: Mr. Examiner, this is not proper direct examination.

Trial Examiner Doyle: Well, I don't see how there is any [239] way other than this counsel can handle it. There are a great many charges here of 8 (a) (1) and I think the only thing he can do is direct attention to specific testimony and ask him his version of the conversations. What do you object to?

Mr. Schoolfield: I object to the fact that counsel is not asking what was said in refreshing the witness' memory, but in stating in effect what former witnesses said and asking him was that said or not.

Mr. Langmade: The only thing, Mr. Examiner, they themselves weren't able to fix the time and place of these conversations, so to place his memory with that conversation is the only way I know how to do it.

(Testimony of M. A. Quisenberry.)

Trial Examiner Doyle: That is about the only way that I can see that the matter can be handled. I will overrule the objection.

Q. (By Mr. Langmade): Do you remember Mr. Richins testifying yesterday about a conversation you had relative to voting? A. Yes.

Q. What was said at that conversation?

A. Well, I did say something about it because we were going to have an election, although no union official had ever contacted me and asked me for negotiations or asked me anything to this day.

Q. Go ahead.

A. But I did say to them, "Off the record," I said, "This is [240] off the record, and I really shouldn't ask you, but how would you vote if we had an election?" And I did say, "It doesn't matter either way," and I didn't tell anybody that they were going to vote themselves out of a job.

Trial Examiner Doyle: You said you did tell them that?

The Witness: I didn't tell them they would vote themselves out of a job. I didn't tell anybody that.

Q. (By Mr. Langmade): Have you ever been contacted by any member of the union?

A. No, sir. I retract that statement. Mr. Stratten called me one morning when I was still living here in Tucson and talked to me by telephone, but I can't remember the exact conversation. I told him I was willing to enter into negotiation with you present, with my attorney present, at any time that you were willing, and I still say that.

(Testimony of M. A. Quisenberry.)

Q. Now, with reference to the discharge of Mr. Richins, would you relate the conversations and times and places and what happened?

A. This No. 11 truck——

Q. Is that the truck that Mr. Richins was driving?

A. That is the truck that Mr. Richins was driving. When we brought it down here, it did have a transmission in it that had a rattling fifth gear; it rattled. In other words, every time you used the fifth gear, it rattled, it didn't jump out of gear or anything, but it just made a noise. So we put a new fifth [241] gear in it, just the fifth gear, and Mr. Richins drove it approximately three times, or four after that new transmission was put in, and the transmission fell out of it. In other words, it just came to pieces. Now, I looked at that transmission when they had it apart the first time and the gears were all in good shape. When Mr. Doolittle brought the truck back after it was patched up out there on the road so we could get it to Phoenix, every gear in it, starting from the first gear on, with the exception of the reverse gear, the teeth were rounded off the edges of the gears to show that somebody was pushing that thing in gear. And it couldn't have happened any other time because I looked inside the transmission just before that. So then we put another transmission in.

Q. All right. Then it was patched up in order to be taken on to Phoenix for a new transmission to be put in it; is that correct?

(Testimony of M. A. Quisenberry.)

A. A new transmission was put in it, yes, sir.

Q. And Mr. Richins was still on the job?

A. Yes, sir.

Q. All right. Then what happened?

A. Richins went back on the truck and about three trips later the fifth gear started rattling again and jumping out of fifth gear, you couldn't keep it in fifth gear. So I laid Mr. Richins off, fired him.

Q. And did you examine the gears yourself personally the second [242] time they were taken out?

A. Yes, sir, I drove to Phoenix to look at them.

Q. What condition were they in?

A. They were in the same shape that the other gears were in. The corners were rounded where somebody had been cramming that thing in gear.

Q. Now, this last transmission, was it a brand new transmission or was it one that had been used, or a repaired one of the same transmission?

A. It was an old case, the outside box was an old case but every bearing and every gear in it was new. It was a new transmission.

Q. And would you fire anyone that did that to a transmission?

A. Mr. Langmade, I would fire my own brother if he did a transmission that way, I don't care who it was.

Q. Now, when you say you fired him, what was the conversation and how—

A. We were at the Dixie Truck Stop, but I tried to get a-hold of Mr. Richins, and as he stated

(Testimony of M. A. Quisenberry.)

in his testimony, he didn't have a phone and I called his sister-in-law.

Q. This was on or about May 25th that he was discharged?

A. That is right. I am not sure, it was either his sister-in-law or his sister, some relation of his whom we used to call to get hold of him, and I couldn't get anybody to answer the phone there so I already had another driver hired to take this [243] truck and I just waited at the truck stop until Richins came down.

Q. What was your conversation?

A. I said, "Bill, I am firing you because of that transmission." And he said, "Well, I take it I am fired for union activities," and walked off. That is all the conversation I had with him.

Q. Who was the man that you hired to replace him? A. McDonald.

Q. Is he still with the company?

A. No, sir. [244]

* * * * *

Q. Now, relative to John Cox, you heard the testimony here yesterday? A. Yes.

Q. And Mr. Cox was discharged; is that correct?

A. That is right.

Q. And for what reason did you discharge him?

A. For speeding.

Q. Will you relate the circumstances up to that—leading up to that?

A. Yes, now, relative to this, there was times when the refinery wasn't staying open 24 hours a

(Testimony of M. A. Quisenberry.)

day. Now, the refinery is open at this time 24 hours a day, so, consequently, we can load any time we get there. At this time the refinery closed at 8:00 o'clock in the evening. Sometimes the trucks would be running so late that I just would be right on the line getting into the refinery. And I did tell, on occasions, Bill Turner and John Cox and Harry Almada and, I believe, Bill Johnson one [245] time, and Bob Dayton, I did tell some of those boys who I thought were my better drivers that could handle the trucks, to take the chart out and make the refinery. But I said, "Do it safely," but that didn't mean that I wanted it done all the time when I was running on time. When I was running on time I expected the trucks to be treated as such, 55 miles an hour. That is like saying the speed law is 50 miles an hour, but that doesn't mean across a plowed field, that means on a good highway. But John had driven three or four times at a sustained speed of 60, 65, all the time. Some of the boys would get up to 60 once in awhile passing somebody, I wouldn't say anything about that, because if they get out on the left side of the road, they have got to go on by.

Q. Now, did you have any conversation with him relative to his speeding prior to the time you discharged him?

A. I believe on about the 12th, we were discussing the speed.

Q. The 12th of which month? A. Of May.

Q. All right, go ahead.

(Testimony of M. A. Quisenberry.)

A. We were discussing speed.

Q. Do you recall the conversation?

A. No, not exactly. I said that I didn't want the trucks driven over 55 unless I get specific orders for that truck to be driven that way.

Q. And what was his reply? [246]

A. He said he didn't.

Q. Then that was the last conversation you had with him up until the 15th of May when he was discharged?

A. When I discharged him, yes.

Q. What was that conversation, where did it take place?

A. In my house. Relative to that, my office is in the house. That is the only place we have for an office right now until we get a terminal built. That is the only place we had for an office here. That is where the books were kept. So, consequently, most of the conversations I have with most of the drivers are right at my house. I called him in and I showed him this chart and I said, "Johnny, we can't go for this kind of stuff. We will have to let you go."

Q. Was there any conversation at that time about being discharged because he belonged to the union or didn't belong to the union?

A. No, the only conversation I had with him relating to the union—yes, it was mentioned then, too. I asked him if he was a paid-up member in good standing in the union. I did ask him that.

Q. You don't know what his reply was?

(Testimony of M. A. Quisenberry.)

A. He said, "Yes, I am."

Q. Then what was the other conversation?

A. When I first hired him?

Q. And that was the time you stated that you were asking those [247] questions?

A. Yes, I admit that I asked everybody those questions when I first hired them. Some of the boys I didn't, some of them asked me before I ever hired them.

Q. Now, relative to Kenneth VanHorn, I believe the testimony was that he was employed around the 1st of May and the employment terminated sometime around the 12th or 13th of May?

A. Uh-huh.

Q. Did you discharge Mr. VanHorn?

A. I did.

Q. And for what reason?

A. Because he couldn't get over to the truck stop when the truck was in. I always had to go wake him up and sometimes the trucks would be coming in at 3:00 in the morning and I was staying up pretty late and I couldn't leave there. I had to sleep sometime.

Q. Well, on this particular day that he was discharged, which I believe was May 12, according to my penciled notation, there was some confusion in the testimony about when he took out the run or when he didn't. Do you remember, can you recall the exact conversation, what happened on that day?

A. He was supposed to take an early truck out that day and he didn't make it over. I say an early

(Testimony of M. A. Quisenberry.)

truck, I mean around 4:00 a.m., as best as I can remember. And he didn't show up. So I was out to the truck stop a little while after that and I [248] called another driver for that truck and sent it on. And later that afternoon about 1:00 or 2:00 o'clock, another truck came in and the driver that I sent out that morning had just gotten back, so I sent VanHorn on that trip. And this was the second or third time that he had missed trips from being late.

Q. And then what was the conversation when you discharged him?

A. I just told him I was firing him because he couldn't get to work on time. And he sat in the booth and said, "I assume you are firing me because of the union activities?" And I said, "No, sir, Kenneth, I am not," and I didn't.

Q. Then later on, you had rehired Mr. VanHorn?

A. Yes, he called me right around the 1st of September, I think, and wanted to talk to me and I was in Phoenix and we couldn't get together, he would call the office and I would be down some place. And often he would call me from the Fruehauf Trailer Company and I would be back in the office and finally he came to Phoenix and I talked to him at the Texas Independent home office.

Q. And what was that conversation?

A. I told him that I would have a job for him, and I said, "In Tucson," and he said, "Slim, I would rather work in El Paso." I said, "That is fine, I will see if I can't work you in down there,

(Testimony of M. A. Quisenberry.)

because we still have other trucks coming on to the job and I am still hiring drivers all the time." I said, "I will see if I can't work you in down there." So I had one run in El [249] Paso and I told him he could come down, and I paid him.

Q. Then when he got here, the run wasn't available?

A. Yes, he pulled a run here before he came to El Paso. Then I paid him for driving his car to El Paso and he made one run from El Paso and I told him I would have to have him in Tucson because of one truck breaking down. That gave me a surplus of drivers down there. I paid him for coming back again and furnished his gas. I haven't paid him yet, but it will be on his check when he gets it pay day.

Trial Examiner Doyle: As I understand it, he is now working for you?

The Witness: Yes, sir, he is.

Trial Examiner Doyle: That is back in Tucson?

The Witness: He is here in Tucson.

Trial Examiner Doyle: I just wanted to be sure to have these men straight in my mind.

Q. (By Mr. Langmade): To refresh your memory, there was testimony that he had a conversation with someone in Phoenix, and then when he came back here, there was some conversation with you, do you remember that, where he delivered gasoline to Blakely No. 1 in Phoenix?

A. Yes, I remember that conversation. I said,

(Testimony of M. A. Quisenberry.)

"This fellow you were talking to over there, or was talking to you, whichever way it was, is one of the plant employees," and I said, "I would just as soon you wouldn't talk to those boys about any of this [250] stuff." I did say that, but that isn't the reason I fired him.

Q. Now, relative to Sidney Bailey, I believe the testimony was that he was employed the early part of May and discharged on or about the 6th of July, 1953; is that correct?

A. That is about right, yes, sir.

Q. To your knowledge, was there any conversation with him as to whether or not he belonged to the union?

A. I believe there was, yes.

Q. Do you know what that was?

A. Yes, I asked him to put his union affiliation on his application blank.

Q. Anything else?

A. And I told him I would rather that the job would not go union until we got smoothed out. At this time we were sort of confused. We were moving trucks in and hiring drivers and eliminating drivers and running up and down the road here trying to get the thing going, and until we got rolling smoothly, I would rather not. I did say that.

Q. And then you discharged him on or about the 7th of July, 1953?

A. On or about that date, yes.

Q. What was the reason for that?

A. Well, the truck had been sick. When this particular truck was brought down here it had a

(Testimony of M. A. Quisenberry.)

brand new motor in it, No. 15, and it ran very good up until this time and it began being sick. I [251] mean it wouldn't pull, part of the time it would be missing and break an injector line, and we were just having trouble with it. And we had it in Phoenix, oh, twice, and then sent it back and it sounded the same. So I called the mechanic in Phoenix and I told him, "I am going to send the El Paso driver up there with this truck and if you can't fix it, say so, and I will send it somewhere it can be fixed." So it was fixed that trip and immediately the truck became sick again and it was necessary for me—well, the mechanic phoned me the next morning and said, "Slim——"

Mr. Schoolfield: I object to that, Mr. Examiner.

Trial Examiner Doyle: Sustained, that would be hearsay.

Q. (By Mr. Langmade): Do you know of your own knowledge what was wrong with the truck?

A. Yes.

Q. What was wrong?

A. Mr. Bailey would go down the road at 50 miles an hour with his foot on the throttle uphill and would pull that compression release under the assumption that he was cleaning the soot out of it. He told several drivers that that was the way you cleaned the motor out.

Mr. Schoolfield: I object to that and ask that it be stricken from the record as hearsay.

Trial Examiner Doyle: Strike it out.

Q. (By Mr. Langmade): I will rephrase my

(Testimony of M. A. Quisenberry.)

question. Do you know what was wrong with the piece of equipment and why it was [252] sick?

A. Yes.

Q. To your own knowledge?

A. My own knowledge.

Q. What was wrong?

A. He was pulling this compression release.

Q. Now, would you explain to the Examiner what pulling the compression release means?

A. Yes, a compression release on a diesel truck is used for starting or stopping the motor. If you are sitting still, you always let the motor come to an idle before you pull that compression release. You pull that compression release and consequently it doesn't fire and the motor dies. So it is the same way when you start the motor, you pull the compression release and push the starter button and as soon as the motor gets turning free, you push the compression release in and it stops. That is the only reason for that compression release, to start and stop that motor, like turning a switch off and on on your automobile.

Q. Now, did you have any occasion yourself to see Mr. Bailey pull the compression release?

A. Yes.

Q. When and where was that?

A. It was going up Texas Canyon just out of Benson going towards Willcox. It was night.

Q. What were the circumstances? [253]

A. I was driving behind him in my car.

Q. Do you often do that with various drivers?

(Testimony of M. A. Quisenberry.)

A. I do that with all the drivers. Lots of times I am behind them in the car, but in this particular instance, I was wanting to see for myself whether or not this was happening, and I saw it happen.

Q. And relate the circumstances of what happened.

A. Well, he was going up—well, there was a long grade as you go just out of Benson, you go up a steep pitch and then it is sort of a long grade up to the top of Texas Canyon there and I would imagine from the speed he was making that he must have been in about fourth direct. And he was working at about, oh, maybe a three-quarter throttle. It may have been a full throttle but I don't imagine he was working at it full throttle. But suddenly, a ball of black smoke came out of that thing and you could hear that motor go k-l-u-t-t k-l-u-t-t. The compression release had been pulled, and I let him go on to El Paso and I turned around and came back to Tucson and I called him the next day and told him.

Q. What was your conversation with him then?

A. I just told him that he had been pulling the compression release on that thing and he was fired. He said he didn't do it, and I said, "Bailey, I saw you do it."

Q. I will ask you, Mr. Quisenberry, whether or not you have discharged any men since the beginning of this operation other [254] than that period here at this hearing—that period concerning this hearing?

(Testimony of M. A. Quisenberry.)

A. Yes, one. His name was Bob Heatherly and I fired him for wrecking a truck and burning it up.

Q. Were any other employees whose charges were filed here——

A. No, I think everybody I have fired is right here or was here.

Mr. Langmade: I believe that is all.

Trial Examiner Doyle: May I just suggest that you might have some testimony on this line.

Now, how many men were there employed as truck drivers here during this period? Now, we have had the testimony of a number who were laid off and discharged. Were there any of these employees who were hired at about that time and whose employment was not interrupted in any such way as those here?

Mr. Langmade: I will ask that, Mr. Examiner.

Q. (By Mr. Langmade): How many employees do you have at the present time?

A. Twenty-six on the payroll; that is the over-the-road operation.

Q. And approximately how many did you have in the beginning when you first started this operation?

A. Well, I hired two truck drivers to start with because I was only there with one truck.

Q. And the operation has increased until it is now 26? [255]

A. We are getting bigger all the time, yes.

Q. And would you explain if the operation has been continuous or whether certain drivers had

(Testimony of M. A. Quisenberry.)

been laid off other than these that had been discharged?

A. Well, now all the drivers on the trucks, these boys all know that they are driving for me, if their truck happens to break down, they do have to lay off until I can get that truck fixed. If I have it in El Paso, I generally get it fixed quicker than if I have it in Phoenix, that is because I am there to kind of keep pushing things along. All the drivers know they have to lay off if their truck is broken down. If the boys are broken down, the guys among themselves, they split up the rounds and say, "You can have a run for me today; you are not working, and you can go out in my place." They do that of their own free will, I don't have anything to do with that. If they want to trade a run, that is fine, to keep somebody else from laying off.

Q. Can you tell me approximately how many men quit the job of their own volition?

A. Uh-huh.

Q. Can you tell me how many men approximately quit their job of their own volition since the inception of this operation?

A. About nine men have quit. [256]

* * * * *

Examination

Q. (By Trial Examiner Doyle): Now, I am going to ask you about the operations at around about May 12 to 15, at or about the time that Cox and Johnson were terminated. Now, about that time, as far as your driving force was concerned,

(Testimony of M. A. Quisenberry.)

how many men did you have total in your driving force, approximately?

A. I believe I had four trucks here then. Now, I am not positive about this, so if I had four trucks here, I would have eight or nine drivers.

Q. All right. I will make it four trucks. Tucson, nine drivers.

A. They weren't all in Tucson. Part of them was in Lordsburg because we was splitting this in Lordsburg.

Q. You had four trucks, Tucson; was that considered the headquarters for the four trucks?

A. That was considered the headquarters, yes, sir.

Q. Then you have two men in Tucson and two men in Lordsburg; is that the way it is?

A. One man in Tucson and one man in Lordsburg.

Q. All right. Now, where were the headquarters for the others? There was more than one man at Tucson, wasn't there?

A. One man for each truck.

Q. One man for each truck?

A. Yes, sir, and a man for each truck in Lordsburg.

Q. All right, four at Lordsburg and four at Tucson? [257]

A. Yes, sir.

Q. All right. Now, what other force did you have?

A. At that time I didn't have any.

Q. That was the total?

(Testimony of M. A. Quisenberry.)

A. That was the extent.

Q. That was the extent of your operations?

A. Yes, at that time. We were moving trucks down all the time.

Q. Now, from the men that you had at that time, the eight men there, am I to understand that you had an altercation of some sort with practically every one of those men? A. No.

Q. All right. Who was it that was working at that time and who is still working that wasn't involved in this?

A. George Wallsmith and Herschel Beeson was both working at that time.

Q. Wallsmith and Beeson?

A. Stewart Seymour was working at that time, and Grossheim, Joe Delgado, Al Jenson, and I am not sure, but I believe Howard Saner was working at that time. I think that is about all. [258]

* * * * *

Mr. Schoolfield: I solicit a stipulation at this time that the application for employment heretofore referred to as General Counsel's Exhibit 2, marked for identification, the bottom line or blank on that application reads as follows:

"Activities other than religious (civic, athletic, fraternal, and so forth)" and a long blank to be filled in under that in small print excluded the organization, the name or character of which indicates the race, creed, color or national origin of its members. That completes the blank or line referred to in this case.

(Testimony of M. A. Quisenberry.)

Mr. Langmade: What exhibit is that?

Mr. Schoolfield: It is Exhibit GC-2, marked for identification.

Trial Examiner Doyle: You propose a stipulation in lieu of putting in evidence the entire application?

Mr. Schoolfield: That is correct, Mr. Examiner.

Mr. Langmade: And I will so stipulate that that is what the application states.

Trial Examiner Doyle: And as I understand it, that is the line of the application blank to which testimony has been [259] referred, stating that some of the applicants filled that in with the name of the union in that blank. All right, thank you, gentlemen.

Cross Examination

Q. (By Mr. Schoolfield): Mr. Quisenberry, when did you first see the tire that was burned by Harry Almada?

A. The morning that it happened, right after it happened. I said right after it happened, it was six hours maybe before I was there.

Q. How did you happen to see that tire?

A. I knew where it was.

Q. How did you know about it?

A. Somebody called me and told me about it.

Q. One of your other drivers?

A. Somebody called me and told me about it.

Q. And you went to the spot on the road where it lay?

A. I sure did.

(Testimony of M. A. Quisenberry.)

Q. Now, how did you know that wasn't a different tire?

A. Because the person who called me and told me about it told me which wheel it came off of. He told me it came off the trailer.

Q. Now, you stated before that in your opinion the tire had been at least 30 miles or 35 miles to burn that badly; is that correct, sir?

A. It would possibly take more than that. [260]

Q. You think it would take more than that?

A. It possibly would, I say.

Q. Go on.

A. If he was loaded, it could burn in 35 miles like that, easy.

Q. And you formerly stated also that the position of the tire was approximately 80 miles from Lordsburg; is that correct?

A. Yes, uh-huh.

Q. And the truck itself was empty; is that correct?

A. Yes, the truck and trailer were empty.

Q. Mr. Quisenberry, would you tell us whether a man driving an empty truck would be more likely to suspect a blown-out tire than a man driving a loaded truck?

A. If a tire blows out, you will know it.

Q. Did this tire appear to be—to have blown?

A. You couldn't tell, it was burned up so badly you couldn't tell. If it had blown, he would have known it.

(Testimony of M. A. Quisenberry.)

Q. Then it is your opinion that the tire did not blow?

A. It is my opinion that the tire did not blow out.

Q. Now, on Mr. Almada's procedure, after he found out the tire was burning, was there anything to be criticized about his actions at that time?

A. After he had found he had burned the tire?

Q. Yes.

A. No, I can't say as he did anything to be criticized. It [261] was the act of burning the tire. In all of our operations, sir, we have never burned a tire like that.

Q. Now, Mr. Quisenberry, laying the tire on the side of the road was a careful and sensible thing to do, was it not? A. I agree.

Q. To put a tire that might catch aflame back under the rack of a gasoline truck would be extremely dangerous, would it not? A. I agree.

Q. Now, Mr. Quisenberry, did you ever give your drivers printed instructions on the length of the number of miles between truck bumps?

A. No.

Q. Did you ever give your drivers any type of instructions other than verbal on that?

A. Verbal instructions, yes.

Q. Is that all you ever gave to them?

A. Well, after that, I did have some printed forms made up.

Q. And then you handed them around to your drivers? A. Yes, sir.

(Testimony of M. A. Quisenberry.)

Q. What mileage did you put on those printed forms?

A. Sixty to seventy, I believe, as well as I remember.

Q. You didn't put 80? A. No, sir.

Q. You, of course, naturally wouldn't put 80—is this a correct statement: Did you, when you put this circular out that [262] you are talking about, these printed instructions, make the number less than 80 miles because of the Almada incident?

A. No, sir, I always had it 60 miles, tire bumps.

Q. Mr. Quisenberry, I will hand you a paper that I have marked——

Mr. Schoolfield: I will ask the reporter to mark it as General Counsel's No. 3——

Q. (By Mr. Schoolfield): ——and see if you recognize this. Is that your signature at the bottom? A. It sure is.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3, for identification.)

Q. (By Mr. Schoolfield): And is that the paper I read from a second ago? A. Yes.

Q. Would you read No. 8?

A. "Drivers will bump tires at least every 80 miles and check transmission and hubs for heat."

Q. Then you identify this paper as the one you gave your drivers? A. I do.

Mr. Schoolfield: If the Examiner please, the attorney for the General Counsel requests that the

(Testimony of M. A. Quisenberry.)
exhibit marked GC-3 for identification be offered in evidence at this time. [263]

Mr. Langmade: No objection.

Trial Examiner Doyle: There being no objection, the document is received in evidence and shall be marked General Counsel's Exhibit No. 3 in evidence.

(The document heretofore marked General Counsel's Exhibit No. 3, for identification, was received in evidence.)

Q. (By Mr. Schoolfield): Now, Mr. Quisenberry, what kind of a driver, in your opinion, was Harry Almada? A. He is a good driver.

Q. A careful and good driver?

A. His accident record doesn't show that he is such a careful driver but he is a good driver.

Q. What is his accident record?

A. Oh, the accident record he had with a company before I hired him, he had two accidents with that company. That is the reason he was out of a job when I hired him.

Q. Was that a major accident?

A. I wouldn't know, sir.

Q. Just all you saw on it was "accident"?

A. That is all I know.

Q. How do you know he was out of a job because of the accident?

A. The fellow over at the time at the Southwestern Freight Lines told me.

Q. But you had Mr. Almada test hopped? [264]

A. I rode with him.

(Testimony of M. A. Quisenberry.)

Q. You rode with him yourself?

A. Yes, sir.

Q. And he checked out all right?

A. Yes, sir.

Q. Now, Mr. Quisenberry, when did Mr. William Johnson show up late for work?

A. I don't remember the dates. I can't tell you the dates. I mean all this stuff has happened and I don't keep down the dates, or anything. I couldn't say what day it was.

Q. Did he show up late for work before he terminated his employment?

A. He terminated himself.

Q. Did he show up late before that time?

A. Yes.

Q. How late was it, do you recall?

A. Oh, two hours, I think.

Q. And it is your statement now that you did not discharge him because of that?

A. He just left and didn't come back; I had to replace him.

Q. I understand that, but you also stated he showed up late before for work and didn't come back?

A. That is correct.

Q. Can you remember how many days before he showed up late for work it was before he terminated his employment? [265]

A. I can't.

Q. Would it be the day before?

A. Possibly.

Q. Now, Mr. Quisenberry, how many men of

(Testimony of M. A. Quisenberry.)

yours, how many men will drive your truck on a run of 24 hours?

A. We don't have any men running runs of 24 hours.

Q. You have shifts, do you not? A. Yes.

Q. And if you send a truck out, there might be two men driving before it has completed its run back to its original starting point?

A. It will be two.

Q. At least two? A. Yes.

Q. Sometimes three? A. No.

Q. Just two?

A. Uh-huh. Now, at this time you are speaking of, three men could have driven it, yes.

Q. The time of the termination of William Johnson, you mean, sometime around the 15th of May?

A. Uh-huh.

Q. And that would be also around the time when you discharged Mr. Richins, would it not?

A. I don't know, I think so. I am not sure of the dates. [266]

Q. Now, you have stated you discharged Mr. Richins for manhandling gears, is that correct?

A. That is correct.

Q. How about the other drivers on that same truck, how did you know they didn't manhandle the gears?

A. Because I rode with them and I never did ride with him; Harry rode with him.

Q. When did you ride with the other drivers?

A. During the process of hiring them and, oh,

(Testimony of M. A. Quisenberry.)

sometimes I would get in and ride up the road
aways with them and have somebody bring my car
and then I would get my car and come back. I
have done it several times.

Q. Mr. William Turner testified, I think, that
he test hopped Mr. Richins; is that not correct?

A. I am not sure; he or Harry one gave Richins
a student trip.

Q. You don't recall who did?

A. No, I think they both did.

Q. I think that was his testimony.

A. They both did.

Q. They had two check-outs? A. Yes.

Q. Now, did you talk to Mr. Turner about Mr.
Richins' driving? A. Yes.

Q. Did you get a satisfactory answer—I suppose
you did, you [267] hired him.

A. What Turner told me, he said, "Bill is not
used to this heavy equipment, Slim, but he will
make you a good man. He will learn as he goes
along."

Q. Now, what did Mr. Almada tell you?

A. Approximately the same thing, that Bill
would make a good man, that Bill was a careful
driver.

Q. Now, Mr. Quisenberry, is it not true that the
transmission in the truck Mr. Richins drove was
too small for its load? A. No, sir.

Q. Is it your testimony that the transmission
was large enough for the equipment?

A. Yes, sir.

(Testimony of M. A. Quisenberry.)

Q. Was it as strong as any other transmission in any other truck?

A. I wouldn't say that it is as strong as the transmission in a KW truck, no.

Q. Is it the same size transmission, or was the same size transmission then as it is now? Is the transmission in that truck now the same size as it was when Mr. Richins drove it?

A. No.

Q. A larger transmission?

A. No.

Q. Stronger transmission?

A. Bigger gears. [268]

Q. Bigger gears?

A. A lower-geared transmission.

Q. A lower-geared transmission?

A. Yes. At that time the gear ratio in that truck, it would run at top speed, I believe, in fifth drive, I think the top speed was about 72 miles an hour. Am I right on that? And now the top speed on the truck is around 64. I mean that is the difference in the gear ratio that we have put in now. But the transmission is the same size still.

Q. Now, I think you have testified that after you discharged Mr. Richins, you had to work on that transmission again; is that correct?

A. That is the reason I discharged him, because of the second time the transmission was jumping out of fifth gear, we couldn't hold it in fifth, the same gear.

Q. Now, the first time the transmission was repaired, you also testified that you put only one new gear in; is that correct?

A. No, sir.

(Testimony of M. A. Quisenberry.)

Q. What did you say then on that?

A. We patched it up in Lordsburg. The mechanic went out and just patched it up enough for us to get it into Phoenix and the mechanic brought it in himself.

Q. What was that patch-up job?

A. I don't know. I didn't go out there. Eddy Doolittle, the mechanic from Phoenix, took care of it. And I saw him in Tucson [269] when I got to Tucson. He drove the truck in himself, and he took the truck on into Phoenix and he dumped the load of gas and he rebuilt the box.

Q. Then it is your testimony that the box was completely rebuilt?

A. Yes.

Q. And every part was brand new?

A. Yes, sir, everything but the case.

Q. Now, Mr. Richins testified that he was able to stop the truck in enough time to keep from damaging the case; is that correct?

A. I presume so, if he kicked the Brownie box out of gear, and as long as the Brownie box is out of gear, there is nothing that can be concerned in the main box.

Q. Then as far as you know, the transmission broke down not during a gear shift; is that correct?

A. I wouldn't know.

Q. You don't know that?

A. I don't know that; I wasn't there.

Q. Did you not testify that before Mr. Richins was put on that truck, that those gears had been fixed?

A. That is right.

(Testimony of M. A. Quisenberry.)

Q. Did you say that it was jumping out of fifth gear when he went on it?

A. No, sir, I didn't say that. [270]

Q. What did you say about that?

A. When we brought that truck down here, it had a good transmission in it.

Q. How do you know that?

A. Because I drove it down here myself.

Q. And the transmission was all right?

A. Yes.

Q. And it was not jumping out of fifth gear?

A. No, sir.

Q. When did it start jumping out of fifth gear?

A. I couldn't say the date, I couldn't say the date but it was approximately three or four trips after we got it down here.

Q. And who was driving for those three or four trips?

A. Richins was driving from Lordsburg.

Q. And after he had had his first transmission failure, you put him back on the same truck, did you?

A. I sure did.

Q. Do you recall who else drove that truck the second time?

A. Uh-huh, Alton Everett drove it on this end. and I believe Bill Johnson drove it. I believe, I wouldn't say for sure, but I believe Bill Johnson did drive it.

Q. And did you discuss with Alton Everett or Bill Johnson the shape of the gears or the repair of the truck?

A. I don't think so.

(Testimony of M. A. Quisenberry.)

Q. And the only reason then that you know that Mr. Richins [271] was the one that tore up the gears is because you had remembered that you had ridden with him before; is that your testimony?

A. No, no, not at all.

Q. How did you know it was Mr. Richins that tore the gears out of the truck, if they were torn out?

A. Because I rode with these other boys. They had had more experience. They were just better truck drivers than Bill Richins was.

Q. How old a truck was that, Mr. Quisenberry?

A. That is a 1951 Sterling. That truck is two years old this month.

Q. Can you estimate the number of miles on that truck?

A. A million and a quarter.

Q. A million and a quarter miles?

A. Yes, sir.

Q. That is a lot of miles.

Trial Examiner Doyle: May I interrupt here for a moment. Are these trucks sort of standard in your operation? Do you use Sterlings of this model?

The Witness: We had three of them, Mr. Examiner. We only have two left now. One of them burned up. We have had three of them and the rest of them are KW's with the exception of one Autocar, but they are all with tank and trailer.

Trial Examiner Doyle: The three Sterlings were all the same? [272]

The Witness: Yes, sir.

Trial Examiner Doyle: The transmission in all

(Testimony of M. A. Quisenberry.)

three of them were the same kind of transmissions, were they?

The Witness: With the exception of the other two, which had lower-speed gear ratios in them.

Trial Examiner Doyle: All right. Had you put the lower-speed ratio gears in those other two cars because you had had a similar experience with transmission as this car?

The Witness: No, sir.

Trial Examiner Doyle: Who made this modification in the transmission, your company?

The Witness: The equipment came to us that way.

Trial Examiner Doyle: It came to you that way?

The Witness: It came from the factory that way, yes, sir.

Q. (By Mr. Schoolfield): What is the advantage of the lower-speed gears, Mr. Quisenberry?

A. Well, the advantage of the lower-speed gears, especially in that fifth gear, you are pulling a motor hard in fifth gear, and anybody knows not to do it, but if you pull a motor hard in that fifth gear, you will finally knock that gear out of the main box every time.

Q. I see.

A. At a sustained—just holding it there, you know, just keep racking her back all the time, the fifth gear will go out.

Q. And that is why you put the lower speed gears in there? [273]

A. That is right.

Q. Does that have more pulling power?

(Testimony of M. A. Quisenberry.)

A. Not in fifth gear, it doesn't, no. You just don't pull one in fifth gear like that. The boys don't use their overdrive gears to pull steep hills in lower gears.

Q. I see. Then without the lower-speed gears, the fifth gear will go out on the other trucks?

A. The fifth gear will go out on any truck if you use a sustained pulling power on it all the time, a strain, in other words, a fifth gear will go out on any box, whether it be Sterling, KW, Auto-car, or whatever it is.

Q. Now, the KW's and the other type trucks you use, are they more powerful trucks than the Sterling? A. No, sir.

Q. Are the Sterlings more powerful?

A. They are both the same.

Q. Both the same?

A. They all have the same motor with the exception of one truck.

Q. Do they carry the same capacity of gasoline?

A. No, sir. No. 15 carries 8200; No. 3 carries 7700; No. 11 carries 7900; No. 1 carries 7950.

Q. There is not too much difference?

A. The gross weight of all of them when they are loaded is practically the same. [274]

Q. Now, when you discharged Mr. Richins—Strike that.

Had you formerly warned Mr. Richins about the gears in the truck before you discharged him?

A. No.

Q. In other words, you just went up and fired

(Testimony of M. A. Quisenberry.)

him and said it was just because of the transmission: is that correct?

A. That is exactly it.

Q. Now, on John Cox, Mr. Quisenberry, did you warn John Cox about speeding?

A. I had a talk with him around about the 12th, and the conversation was about speeding, and I said, "I don't want these trucks driven over 55 miles an hour unless I give specific orders to do so."

Q. Was it often that you would give these orders?

A. At that time it was fairly often, yes.

Q. Now, would you tell the driver to keep at 55 miles an hour if you didn't want him to hurry up on his trip?

A. That is right, stay within 55 each time.

Q. Would you tell him each time he went out?

A. No, sir. They knew that if I didn't give them orders not to do it, they knew not to do it. If I didn't come out and say, "I want you to make the refinery: open the clock and go on," then they knew to put the chart in there and run 55 miles an hour.

Q. Had you told each of those drivers individually that? [275]

A. I think so, yes.

Q. Are you sure?

A. No, sir.

Q. Is it possible that these drivers could have been confused on your orders for the speed?

A. Hardly.

Q. Who was the man that talked to VanHorn at Blakely No. 1; what was his name?

A. I don't know.

(Testimony of M. A. Quisenberry.)

Q. You don't know who it was?

A. No, sir.

Q. Did you know where this man worked?

A. Yes, sir.

Q. Where did he work?

A. Texas Independent Oil Company.

Q. That man worked for Texas Independent Oil Company? A. Yes.

Q. How did you know he worked for Texas Independent Oil Company?

A. Because I seen him around there.

Q. But you don't know his name?

A. No.

Q. Go on.

A. There are a lot of people working up there, guys driving tank trucks, and stuff around that plant, I don't know their [276] names; I don't know them at all. I have no business up there. It is very little business I carry on that way. Telephone conversations and mail is about the only contact I have up there.

Q. Is Blakely No. 1 at Texas Independent's office? A. No.

Q. Where is Blakely No. 1?

A. Nineteenth Avenue and Buckeye Road.

Q. Would you know what an employee of Texas Independent would be around there for?

A. Yes, sir.

Q. Why?

A. Oh, I might be fixing up a sign. I might be

(Testimony of M. A. Quisenberry.)

fixing up a pump or repairing a water cooler, or I might be doing anything.

Q. A Texas Independent oil man would be at Blakely No. 1 doing those things?

A. Yes, sir.

Q. For what reason? That is not owned by Texas Independent Oil Company, is it?

A. I don't know.

Q. Well, did Mr. VanHorn describe the man to you when he called you about it? A. No.

Q. How did you know that he talked to a man there? Did you know it before you talked to VanHorn? A. Did I know what? [277]

Q. Did you know that VanHorn carried on a conversation with an employe of the Texas Independent Oil Company at Blakely No. 1 before you talked to VanHorn and discharged him?

A. I was in Phoenix when Van Horn was dumping that load.

Q. Then you saw him talking to this man?

A. That is right.

Q. And you don't know the man's name?

A. No, sir.

Q. Now, Mr. Quisenberry, on Sidney Bailey, your testimony has been that the truck was sick; is that correct?

A. After he started driving it, yes.

Q. It was not sick before? A. No, sir.

Q. I think you said it was a brand new engine in that truck?

A. When we brought it down here, it was.

(Testimony of M. A. Quisenberry.)

Q. And Mr. Bailey went right on it?

A. No, sir.

Q. Who did start driving it?

A. When I brought No. 15 down, Bill Turner drove it first and Harry Almada and then as I got a bigger truck down here, I brought a 300 horse motor down here and I put Harry on the 300 horse and Al drove No. 15 for awhile, and Mr. Nutter drove No. 15 for awhile, but I don't think Nutter drove No. 15 —yes, I guess he did, too. He drove No. 15 before this happened.

Q. Now, you have testified that you followed Bailey? [278]

A. Uh-huh.

Q. In your car? A. Yes.

Q. About how far back of him were you?

A. Oh, a hundred fifty feet, two hundred, maybe; I don't know exactly, it was night.

Q. Can we say it was a reasonable distance for caution and care on the road?

A. Yes, I would say so.

Q. It wasn't your habit to get right jam up back of your drivers? A. Once in awhile.

Q. You would follow them even though they had air brakes on the trucks, you would get jam back of them?

A. Oh, not bumper-to-bumper. I would get the length of this room up to them.

Q. Why would you get so close, Mr. Quisenberry?

A. Because I wanted to hear them change gears going uphill. I would want to listen to the motor,

(Testimony of M. A. Quisenberry.)

want to watch their actions. I would want to watch and see how much clearance they gave when passing cars, and see how they rode the shoulder of the road and how they rode the white line—how they handled their truck.

Q. What kind of a driver was Bailey?

A. Very poor.

Q. A very poor driver? [279] A. Yes.

Q. Now, you have testified that you saw a black ball of smoke and heard a motor noise; is that correct? A. Yes.

Q. Now, had you also testified that that is the only means of effecting such a smoke cloud and noise, to pull that compression release?

A. That is right.

Q. Now, you also testified, did you not—did you call Bailey or did you see him in person when you discharged him?

A. I called him on the phone.

Q. And did you ask him if there was a reason for his pulling the compression release?

A. Yes, I asked him why he did it.

Q. What did he say?

A. He said, "I don't do that, Slim; I never do it."

Q. He said he hadn't? A. Yes.

Q. And then you discharged him?

A. I said, "I know you did, Bailey, I can't go for that."

Q. Was there any particular reason that you were following Bailey that night?

(Testimony of M. A. Quisenberry.)

A. Yes.

Q. Why was that?

A. I wanted to see if he was doing this himself. I wanted to [280] see if he was, because the mechanic in Phoenix had told me that he thought that was what was happening to the truck.

Q. And did you follow any of the other drivers on that truck? A. Yes.

Q. And did you see any compression release being pulled?

A. No, sir, not while the truck was in motion.

Q. Is there any reason a man would pull the compression release in the truck while traveling, for a safety reason? A. One reason.

Q. What was that?

A. If a fuel line would break on the back side of the pump between the pump and the fuel supply, if that fuel line would break or come open some way and the pump would take air, the motor consequently would take air and it would run away with itself.

Q. I see.

A. But when that happens, the truck is immediately brought to a screaming halt as quickly as they can get it stopped. They don't keep going on down the road after it has happened. They stop to see where the trouble is.

Q. How many wrecks have you had since you have been operating Texas Independent Oil?

A. I haven't had any.

Q. Your drivers, Mr. Quisenberry?

(Testimony of M. A. Quisenberry.)

A. Four. [281]

Q. Four? A. Uh-huh.

Q. Have you discharged any men over these wrecks? A. One.

Q. And only one; is that correct?

A. I believe so, yes, sir.

Q. The rest of the men are still driving for you?

A. Yes. No, one of them isn't; he quit.

Q. Would you tell us who has been involved in those wrecks, if you recall?

A. Merrill Nutter has had a wreck with No. 9. And Charles Estes had a wreck with No. 1. Stewart Seymour had a wreck with No. 7, and Bob Heatherly had a wreck with No. 9 and burned it.

Q. And Bob Heatherly was the man that was discharged? A. I discharged him.

Q. One more question, Mr. Quisenberry, I want to establish your testimony concerning Sidney Bailey's truck having a new engine. It did, is that correct?

A. It was a new motor when we brought it down here.

Q. And practically new when he went on; is that correct? A. Yes, it was.

Mr. Schoolfield: I will pass the witness.

Redirect Examination

Q. (By Mr. Langmade): Just a couple of questions, Mr. Quisenberry. And that is relative to the time that you came to Tucson [282] from El Paso, did you have any prior experience with Texas In-

(Testimony of M. A. Quisenberry.)

dependent Oil Company as to who their employees were? A. No.

Q. And approximately, since you have been in the employ of Texas Independent since the middle of March, how many times have you been in the office of Texas Independent Oil Company?

A. I have been in the office several times, but the office personnel is all I do know there. I don't know the guys out in the yard or the guys that are driving the tank wagons.

Q. There have been no occasions why you should know them? That is none of your business, is it?

A. That is none of my duties.

Q. And relative to Blakely Oil Company, could you explain for the record what type of business Blakely Oil is in?

A. The retail selling of gasoline and oil and tires and batteries and filling station supplies.

Q. Their operation is filling stations?

A. Multi-pipe unit filling stations.

Q. And what is the principal business of Texas Independent Oil Company? Do they have any retail outlets, or is it all wholesale?

A. All of it is wholesale.

Q. In other words, Texas Independent Oil Company is a distributor of gasoline in Arizona?

A. A distributor of petroleum products, yes.

Q. To your knowledge, do they themselves have a retail outlet?

A. To my knowledge, I don't know that they have any retail outlets.

(Testimony of M. A. Quisenberry.)

Mr. Langmade: I believe that is all.

Trial Examiner Doyle: I have a couple of questions, Mr. Quisenberry.

Examination

Q. (By Trial Examiner Doyle): Now, you say as you hired these men, you asked them whether they were members of the union or not and explained to them that you didn't want the union organized prior to the time that you yourself were organized, you were in operational form?

A. That is right.

Q. Now, then, did you have the occasion ever where you discussed your method of procedure in that regard with anybody of the Texas Oil Company's officers? A. No, sir.

Q. Now, Mr. Steele has been mentioned here several times. A. Yes.

Q. Was he your immediate superior?

A. He is my boss, yes.

Q. Now, did you talk it over with him?

A. I talked to him several times, yes.

Q. Did you talk to him with what you were doing in that regard? [284]

A. It wasn't mentioned until after I had been down here about six weeks, and then it was mentioned and Mr. Steele told me, "I don't know, but I think that you are breaking the National Labor Relations Act and we will have unfair labor charges filed against us for asking those questions. You

(Testimony of M. A. Quisenberry.)

had better talk to Steve." And I did and I immediately was told to cease and desist; quit it.

Q. All right. Did you talk to Mr. Steele or any other official of the company at any time in regard to forming a policy of the company to not hire union men or to keep the union off of the job?

A. We haven't conformed to a policy of not hiring union men or hiring union men. I will say right now that we have as many union men working for us as we do non-union, and I have not made any distinction that way. But now, as I have told you, when I started this deal, I did tell the boys that I would rather not organize until we got rolling.

Q. I know you are in charge of the over-the-road drivers and distribution; what is your title with the company? Do you have any specific title?

A. I guess I am the Terminal Manager for El Paso.

Q. Now, is it your testimony that without any instructions from anybody in the company, in position of higher authority than yourself, that you undertook to interrogate these men as to union affiliations and express your desires in the matter?

A. Yes, sir, for this reason: I always had to ask—I mean I worked for the Utah Construction Company and for several construction companies and for Alabama Freight Lines two or three times, and when I hired a man for those people, I had to ask that question. But most fellows know that those places are union jobs and they immediately

(Testimony of M. A. Quisenberry.)

say, "Well, I have to join the union, don't I?" Well, you have to ask a man that question and you have to tell him if he is not in the union, you have to tell him to go get in the union or we can't hire you. So on the basis of that, I asked these fellows the same question and I didn't know that I was breaking the National—in fact, I never had any dealings with the National Labor Relations Board before, or anything like that. [286]

* * * * *

H. B. SULLIVAN

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you please take the chair and give us your name and address?

The Witness: H. B. Sullivan, Post Office Box 341, Ecletto, Texas.

Trial Examiner Doyle: Mr. Sullivan, speak up, let us hear it.

Q. (By Mr. Langmade): When were you employed, Mr. Sullivan, by the Texas Independent Oil Company? A. August 21.

Q. And I will ask you whether or not you are a member of the Teamsters Union.

A. I have a withdrawal card.

Q. And at the time that you were employed, did Mr. Quisenberry employ you; did Mr. Quisenberry employ you? A. Yes, sir.

Q. At the time he employed you, did he know

(Testimony of H. B. Sullivan.)

that you were a member of the Teamsters Union and had a withdrawal card?

A. I don't know for sure.

Q. Did he ever know after that?

A. Yes, sir.

Q. Did he ever have any conversation with you relative to [287] your union membership?

A. No, sir, other than one time he asked me if I knew that this was a non-union job, and I said, "Yes, sir."

Mr. Langmade: I believe that is all.

Cross Examination

Q. (By Mr. Schoolfield): What did Mr. Quisenberry ask you about this being a non-union job, when was it?

A. I don't remember the date.

Q. But you were hired August 21st?

A. Yes, sir.

Q. Therefore, it was after August 21st; is that correct?

A. He didn't ask me that on August 21st.

Q. You just said that. What did he ask you?

A. He asked me if I knew it was a non-union job.

Q. What did you say to him?

A. I said, "Yes, I know it."

Q. Was this before or after August 21st?

A. After. We was just looking at a truck one day and talking.

Mr. Schoolfield: I pass the witness.

Trial Examiner Doyle: You are excused, Mr. Sullivan.

Mr. Langmade: I call Mr. Grossheim.

JOSEPH G. GROSSHEIM

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows: [288]

Direct Examination

Trial Examiner Doyle: Give us your name and address.

The Witness: Joseph G. Grossheim, 7828 Highway 80 East, El Paso, Texas.

Q. (By Mr. Langmade): By whom are you employed, Mr. Grossheim?

A. Texas Independent Oil Company.

Q. And when were you employed by Texas Independent Oil Company?

A. I think April 19th or the 21st, sir.

Q. And by whom, by Mr.——

A. By Mr. West at the main office in Phoenix.

Q. And are you still employed by the Texas Independent Oil Company? A. I am.

Q. You heard the testimony here yesterday in particular of Mr. Bailey? A. I did.

Q. I will ask you whether or not you have ever had a conversation with him relative to pulling the compression release. A. I did, sir.

Mr. Schoolfield: I object, Mr. Examiner. This is going to be hearsay, I take it.

Trial Examiner Doyle: As I understand, this

(Testimony of Joseph G. Grossheim.)

is going to be a conversation between this man and Bailey.

Is that correct, Mr. Grossheim?

The Witness: That is quite correct.

Trial Examiner Doyle: Overruled. [289]

Q. (By Mr. Langmade): When was that?

A. This conversation took place around the end of May or the first of April; I mean the end of April or the first of May. Now, I am not quite clear on the precise date of it, I just come back from a Lordsburg run and at the time I was living in Phoenix and I wanted to see my wife and I deadheaded in my truck. We were north of Casa Grande when the conversation got around to the motors on the trucks and at the time how the discussion developed, I do not know, but we did discuss the pros and cons of pulling the compression release while you were traveling down the highway.

Q. What was that conversation?

A. Mr. Bailey said, "Well,—"—Anyway, words to this effect, that the pulling of the compression release blew the soot out, it cleaned out the motor, and I said, "Sid, it will also blow everything else out, let's don't do that." He said, "It is good for it." I said, "All you are doing is dumping out pure raw diesel when you pull that compression release and keep your foot on the pump." Sid said, "Why, no, you can see all the black smoke pouring out; that is really cleaning it out."

Now, your motor is hot enough that you have a certain amount of detonation there and so she is

(Testimony of Joseph G. Grossheim.)

bound to fire a little bit of the fuel enough to create the black smoke but you do dump out an awful lot of wet fuel. And I said, "Whatever you do, don't ever do it on No. 7," that was my truck at the time. [290] And that is about the extent of our conversation.

Q. You were hired along at the beginning of this operation, were you not; you were hired around April 19th, is that correct?

A. Yes, sir, but at the plant, the main office in Phoenix. I didn't come down here until the operation was fairly well under way.

Q. When was that?

A. I think I came down just about the middle of May.

Q. Did you ever have any instructions from Mr. Quisenberry as to the rate of speed?

A. Yes, sir, I was told it was 55 miles an hour.

Q. Did you ever have any occasion to violate that speed?

A. Yes, sir, I have, not through his instructions but in the beginning, I got bored at 55 miles an hour and I somehow managed to evade putting the chart in for awhile and every time he would see me, he would say, "Do you have a chart?" and I would quite aptly change the subject and say, "When are we going to get some tires for this thing," and I managed for quite awhile to evade that thing, and then he finally got me.

Q. Did Mr. Quisenberry ever say anything to

(Testimony of Joseph G. Grossheim.)

you about your union affiliateship, whether you were or not?

A. No, sir, I wasn't hired by Quisenberry. I was hired by Hank West and sent down here. The entire deal was done there through Hank West and Quisenberry, so when I brought the truck down, I went to work. That is all. [291]

Q. Were there ever any instructions given to you by Mr. Quisenberry relative to bumping tires?

A. Yes, sir.

Q. When was that?

A. Well, right when I first started working down there. He told me, I believe the first night I took a truck from Lordsburg, he warned me of two things that night, and one of them was—it was slightly raining and he warned me about the road around Seneca Wash, which is quite dangerous during the wet weather, and he said, "For God sakes, man, be sure to bump your tires on the way to Lordsburg." And I said, "How often do you want them bumped," and he said, "At least twice, at the very least, twice." And I didn't really have to be told, but he did tell me.

Q. How long have you been engaged in the transportation business in driving?

A. Since the war, about seven years. I did drive prior to that but it wasn't diesel.

Q. Is it the general practice to bump tires?

A. Yes, sir, a truck driver knows you have got to do that or you have had it.

Mr. Langmade: I believe that is all.

(Testimony of Joseph G. Grossheim.)

Cross Examination

Q. (By Mr. Schoolfield): Mr. Grossheim, you testified to a conversation between you and Mr. Bailey. Did he pull the compression release at that time? [292]

A. I have gone over this in my mind and I can't honestly say that he did.

Q. All you recall is this conversation?

A. That is quite true.

Q. Now, Mr. Grossheim, you have also testified that you have had at least seven years on diesels.

A. No, sir, I did not testify at least seven years' experience on diesel. I said I have had seven years' experience since the war and that a great portion of it was on diesel.

Q. Now, when you change gears in a diesel, Mr. Grossheim, does a great deal of smoke come out of the stack or not?

A. No, sir, not if the gears are properly changed, it does not.

Q. Suppose they are improperly changed.

A. Yes, a great deal of smoke can come out the stack.

Q. Could there also be a popping noise in the engine? A. No.

Q. Could there be any noise at all in conjunction with an improper gear change?

A. Only in the revving up of the motor.

Q. And that would be noisy?

A. Well, yes, but it wouldn't sound like a pop

(Testimony of Joseph G. Grossheim.)

or anything, it would just sound like any acceleration noise.

Q. Suppose the truck had bent push rods, would that make any difference? [293]

A. I can't say that it would. No, if the truck had power enough to pull the hill, I can't see that it would make that much difference.

Q. How about shifting gears on the hill, would there be any more smoke on the hill with the gears being improperly shifted? A. Yes.

Q. Diesel engines smoke a lot, don't they?

A. Yes, in fact, I believe they are called, as a colloquialism, "smokers".

Mr. Schoolfield: I pass the witness.

Mr. Langmade: That is all.

Trial Examiner Doyle: You are excused.

(Witness excused.)

Mr. Langmade: I call Mr. Beeson.

J. H. BEESON

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Give us your full name and address.

The Witness: J. H. Beeson, B-e-e-s-o-n, Benita Courts, Anthony, New Mexico.

Q. (By Mr. Langmade): Are you employed by the Texas Independent Oil Company, Mr. Beeson?

A. Yes, sir.

(Testimony of J. H. Beeson.)

Q. When were you employed? [294]

A. About April 20th, 1953.

Q. And are you still employed by them?

A. Yes, sir.

Q. And in what capacity? A. Driver.

Q. Do you drive one of these pieces of equipment that has been testified to here?

A. Yes, sir.

Q. You heard the testimony of Mr. Almada?

A. Yes, sir.

Q. And were you one of the drivers that came up after Mr. Almada had stopped?

A. I was.

Q. And would you explain what transpired there at that time?

A. Well, at the time I came up, there were two trucks, two of our trucks together. There was, I believe, a freight rig, a Western, I think, stopped already to help the man, and there was another one of our trucks with me, Joe Delgado, I believe. I stopped and went back to see if I could do anything. They had already pulled the tire off the trailer, the wheel off the trailer, and I helped them take the tire off of the wheel. Joe Delgado and I did that. I have a little hand extinguisher—the large extinguisher was sitting out on the ground, whether it had been used or was out of order, I don't know, I never asked—but I did take the little hand extinguisher, which is about 14 [295] inches long, out of Mr. Almada's cab and tried to spray the inside of the tire. Mr. Delgado helped me.

(Testimony of J. H. Beeson.)

Q. And what was the condition of that tire?

A. Well, it was melting inside. The tube was completely melted. There were small pieces of the tube left. The inside of the tire was all melted.

Q. Could you have told from your inspection whether there was a blowout or whether it was flat?

A. A closer inspection might have told, yes, but I didn't go into that.

Q. How long have you driven heavy diesel equipment? A. About five years.

Q. And from experience, could you relate approximately how far that tire had gone before it stopped?

A. Well, I would think it had to go quite aways. I have driven a flat tire when I knew it was flat, oh, I will say up to a hundred miles on an empty trailer, not on a trailer—not on a tractor, but on an empty trailer.

Q. Is that where this tire was?

A. This tire was on the trailer.

Q. And at the end of that run, what was the condition of the tire on your trailer as compared to this? A. It didn't hurt it.

Q. Would you repeat that?

A. It didn't hurt it. [296]

Q. Is that an unusual or usual situation to have a tire in that condition?

A. Oh, on an empty trailer, it is unusual to burn a tire.

Mr. Langmade: I believe that is all.

(Testimony of J. H. Beeson.)

Cross Examination

Q. (By Mr. Schoolfield): Mr. Beeson, you say it is unusual to burn a tire on an empty trailer; is that correct? A. That is correct.

Q. Would a driver then be on his guard for a flat tire on an empty trailer, as a rule?

A. Yes, a driver is more or less on guard at all times for a flat tire on his rig.

Q. Mr. Beeson, do you work at the El Paso end of the operation? A. Yes.

Q. Does Mr. Sullivan work with you at the El Paso end? A. Yes.

Q. And Mr. Grossheim, too, I take it?

A. Yes.

Q. Have you ever burned a tire in your driving experience? A. Yes.

Q. How many? A. One.

Q. Was that on an empty trailer?

A. No, it was on a loaded trailer, semi.

Q. Mr. Beeson, did you call Mr. Quisenberry and tell him about [297] helping Mr. Almada?

A. No, sir.

Q. You did not contact Mr. Quisenberry about that? A. No.

Mr. Schoolfield: I pass the witness.

Mr. Langmade: That is all.

Trial Examiner Doyle: You are excused, sir.

(Witness excused.)

Mr. Langmade: I call Joe Delgado.

JOE L. DELGADO

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Will you please give us your name and address?

The Witness: Joe L. Delgado, Box 771, Lordsburg, New Mexico.

Q. (By Mr. Langmade): And by whom are you employed, Mr. Delgado?

A. Texas Independent Oil Company.

Q. When were you employed?

A. Well, I can't think, but it was around the first part of May of this year.

Q. 1953? A. Yes, sir. [298]

Q. You were one of the earlier drivers to go on?

A. Well, I figure I was about the fourth or fifth driver.

Q. And are you still employed by the Texas Independent Oil Company?

A. Yes, that is true.

Q. Now, did you ever have any instructions from Mr. Quisenberry relative to the speed of your equipment?

A. Well, it wasn't necessarily to Mr. Quisenberry, you see, Harry Almada at that time was working for the company and he was more or less the test driver and he was the one who told us to take caution, and everything, on the road. He warned us, especially me, to bump my tires at

(Testimony of Joe L. Delgado.)

Deming and Las Cruces and not take any chances. And he was the one that actually did the hiring on my part.

Q. In other words, you were actually hired by Mr. Almada? A. Yes, sir.

Q. And he is the one that told you to bump the tires? A. Yes.

Q. And where did he tell you to bump them?

A. At Deming and Las Cruces. That is the same way coming back loaded.

Q. Now, I will ask you whether or not you were there the night that the tire was off the trailer that Mr. Beeson testified? A. Yes.

Q. How did you happen to be there? [299]

A. Well, I was following Harry. In other words, I was following Harry's truck and Beeson was following me. At that time Harry had a more superior truck, which is a 300, compared with our 200, and naturally we was behind. Well, beyond Deming, approximately, I was, oh, anywhere from 20 to 30 miles beyond Deming, when I saw some flares out in the road and I slowed down with precaution and a happened to see a No. 5 on the tank and I said, "Well, Harry must have a flat." At the same time I noticed a freight truck there belonging to Western and it was assisting Harry. At the same time I stopped a distance up and I noticed the smoke. And I came down to assist Harry and I seen this tire burned up. Me and Mr. Beeson held the tire and I saw Mr. Beeson spraying that Pyrene extinguisher, and we left that tire out in the field there

(Testimony of Joe L. Delgado.)

and on the return trip it cooled off and we brought it back to Tucson—to Lordsburg, and the Tucson driver brought it back here.

Q. Now, how many years of experience have you had driving heavy diesels?

A. Well, not very long. I have been trying to get on it three or four years. This is my first steady job. I have tried several locations but it just hasn't been my luck up until now.

Q. What was the condition of the tire?

A. The tube, the inner tube was burned beyond means of recognition. It just melted. Inside the cords were just about to break in flame. [300]

Q. Have you ever had a flat tire or similar experience?

A. No, I had a flat tire once in Willcox and I drove to Benson.

Q. How many miles is that?

A. Oh, I don't know, actually.

Q. Well, approximately, could you approximate it?

A. Maybe 30 or 35 miles, I would judge. I am not familiar with the distance on this end.

Q. What was the condition of that tire?

A. I stopped in Benson and I had that tire taken off and it was in good condition. I had it repaired and put back on the truck.

Mr. Langmade: I believe that is all.

Cross Examination

Q. (By Mr. Schoolfield): Mr. Delgado, could

(Testimony of Joe L. Delgado.)

you estimate the age of the tire that was burned off Harry Almada's truck?

A. No, sir, I couldn't. It was night and dark and the only thing in our mind was just to get that tire changed.

Q. Do you know whether or not it was a re-treaded tire? A. No, I couldn't swear.

Q. In other words, you just don't know at all the shape of the tire, do you? A. No.

Q. Was there a lot of tread on it, could you say that?

A. Well, like I told you before, it was dark and all we had [301] in our minds was to change that tire and keep it away from the tank; it was smoking, you know.

Q. Now, did you not testify that you had had a tire burn? A. No, I did have a flat once.

Q. You had a flat but the tire was not burned?

A. That is right.

Q. Were you loaded? A. Yes.

Mr. Schoolfield: I pass the witness.

Mr. Langmade: Nothing further.

Trial Examiner Doyle: All right, Mr. Delgado, you are excused, sir.

(Witness excused.)

Mr. Langmade: I call Mr. Wallsmith.

GEORGE W. WALLSMITH

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Have a chair and give us your full name and address.

The Witness: George W. Wallsmith, Berino, New Mexico.

Q. (By Mr. Langmade): And by whom are you employed, Mr. Wallsmith?

A. Texas Independent Oil Company.

Q. When did you first go to work for them?

A. First engaged in labor around the 3rd or 4th of April.

Q. In other words, you were one of the original employees?

A. Yes, sir.

Q. Are you still employed there?

A. Yes, sir.

Q. What is your occupation with them; what do you do?

A. I am a truck driver.

Q. Have you carried out the instructions of Mr. Quisenberry in El Paso or been around him in the conversations with the men a considerable amount of the time?

A. A few times, yes, sir.

Q. Has he ever interrogated you as to your union affiliateship or whether or not you belonged to the union?

A. No, sir, he hasn't.

Q. When you were employed, were you given any instructions relative to speed?

A. Yes, sir.

(Testimony of George W. Wallsmith.)

Q. What were they and by whom were they given?

A. At that time the speed was 55 miles an hour.

Q. Who told you that?

A. Mr. Quisenberry.

Q. And what about the bumping of tires?

A. Well, he could have told me that, but it is understood that you bump them.

Q. What is your understanding? [303]

A. Well, I have always tried to bump my tires every 50 or 60 miles.

Q. How long have you been engaged in truck driving?

A. Well, that is practically all I have ever done since 1933, I guess, when I first started.

Q. And what is the general practice relative to bumping tires?

A. I would say 50 to 60 miles.

Q. Did you ever burn up a tire in your experience?

A. Oh, yes, sir.

Q. And did you ever lose your employment on account of burning up a tire?

A. No, but I should have.

Q. I didn't quite hear your answer.

A. I didn't, but I should have.

Q. Why do you say you should have?

A. Well, there was not too much excuse to burn up the tire.

Q. Did you see this particular tire that was on Mr. Almada's truck?

A. No, sir.

Mr. Langmade: I believe that is all.

(Testimony of George W. Wallsmith.)

Cross Examination

Q. (By Mr. Schoolfield): How many tires have you burned in your career as a truck driver?

A. Oh, a couple.

Q. At least a couple? [304] A. Yes, sir.

Q. Any more than that?

A. Not that I remember.

Q. And you were not discharged for it; is that correct? A. That is right.

Mr. Schoolfield: I pass the witness.

Trial Examiner Doyle: Mr. Wallsmith, are you a member of the union?

The Witness: No, sir.

Trial Examiner Doyle: Is there anything further?

Q. (By Mr. Schoolfield): You work at the El Paso end, Mr. Wallsmith?

A. Yes, sir, from El Paso to Tucson.

Q. You live near El Paso? A. Yes, sir.

* * * * *

ERNEST V. SANDERSON

a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Doyle: Have a chair and give us your name and address. [305]

(Testimony of Ernest V. Sanderson.)

The Witness: Ernest V. Sanderson, 3118 Memphis, El Paso, Texas.

Q. (By Mr. Langmade): By whom are you employed, Mr. Sanderson?

A. Texas Independent Oil Company.

Q. And when were you employed?

A. I was employed the 25th day of April—of May.

Q. Of 1953? A. 1953.

Q. Are you presently employed by them?

A. Yes, sir.

Q. And in what capacity?

A. As a driver.

Q. Have you ever been—how many years have you had in transportation business in driving diesel equipment?

A. In diesel equipment, I have only had a couple of years experience in diesel.

Q. Have you ever been a member of the Teamsters Union? A. Yes, sir.

Q. Were you ever questioned by Mr. Quisenberry relative to your membership in the union?

A. No, sir.

Q. You haven't? A. No, sir.

Mr. Langmade: I believe that is all.

Mr. Schoolfield: No questions. [306]

* * * * *

Mr. Langmade: I would merely like to say this, Mr. Examiner, and not to review the facts in this case, but this is something that does occur to me that should be kept in mind, and that is that this

was an entirely new operation; it started from Mr. Quisenberry's coming to Tucson and El Paso and building it up from the middle of April of 1953 up to the present date and he now has, he testified, some 26 drivers in his employ. I think that the Examiner could take judicial notice of the fact that we have been through an era of steady employment and to recruit in the Tucson-El Paso area a credible number of men, that every one of those men is not going to be an excellent driver to drive the equipment which was testified to here cost approximately \$30,000 per unit for truck and trailer. Since the operation began, Mr. [311] Quisenberry testified he now has 26 men on his payroll. There were approximately, I believe he said, between six and eight that quit for reasons of their own, and seven men were discharged, only seven out of that total, and of those seven, six of those men were discharged who have testified before the Examiner. And it would seem to me that in any organization that you would recruit for an operation such as this, that out of that total number of men that that would not be an unreasonable amount of men to discharge in that period of time between the middle of April, including up to date, which is the early part of October. I feel that it has been more or less of a good record in view of the conditions that existed.

* * * * *

Trial Examiner Doyle: The motion will be granted.

Gentlemen, before I read this opening statement with which I conclude, I am going to say this to

the representatives of the [312] parties here concerned, that it has rarely been my experience to find a case so ably presented with a minimum of technical argument as this has been presented by all of the representatives of the parties. I want to compliment you all. You presented your case fully and forcefully and I think with patience and courtesy, and I do believe that this record should have my compliment to the parties who have conducted this hearing.

Now, there is one other point I am going to mention to you, and that is this: And I am going to propose this to you because there are a great many of the people who are here involved in one way or another in this case here in this hearing room. We have had a very thorough hearing here and counsel have ably presented the contentions for both sides here. I suppose it is normal for every litigant in a lawsuit to view the testimony in such a way that he thinks that there is only truth and justice on his own side and that, "I would certainly have to be some sort of a simpleton if I believed the testimony advanced by the other side." It is a natural thing when you are a litigant here and all of you people are so concerned with it here. But all I will say to these experienced counsel here who represent the various sides, and to you, is this: That as one views this testimony as an outsider and hears it, he sees factors of varying degrees, and I say varying degree because it is my hope that I will leave you all mystified as to how I feel about this case, but I do want to point out to you that

there is a way of solving [313] your problems better than leaving it to me or the Board, and that is to sit down and consider these matters and counsel can before the issuance of intermediate report, compromise and settle this case. [314]

* * * * *

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the Sixteenth Region in the matter of: Texas Independent Oil Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local 310, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

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